

IT IS HEREBY STIPULATED AND AGREED

by the parties and attorneys for the respective
parties herein that the signing and filing of the
written deposition be waived; that such deposition may
be signed and sworn to before any officer authorized
to administer an oath with the same force and effect
as if signed and sworn to before the officer before
whom said deposition is taken.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to form, are
reserved to the time of trial.

* * * * *

B21 20386

1 CARL HEGER,
2 CALLED UPON ORAL EXAMINATION BY COUNSEL FOR THE
3 PLAINTIFF, AFTER HAVING BEEN FIRST DULY SWORN, WAS
4 EXAMINED AND DEPOSED AS FOLLOWS:

5 * * * * *

6 EXAMINATION

7 BY MR. TOPMAN:

8 Q. GOOD MORNING, MR. HEGER. MY NAME IS
9 BRUCE TOPMAN.

10 A. GOOD MORNING.

11 Q. I REPRESENT LIGGETT IN THE LAWSUIT
12 AGAINST BROWN & WILLIAMSON.

13 CAN YOU PLEASE STATE YOUR CURRENT
14 EMPLOYMENT, SIR?

15 A. SENIOR VICE-PRESIDENT OF FINANCE.

16 Q. AT BROWN & WILLIAMSON?

17 A. AT BROWN & WILLIAMSON.

18 Q. OKAY. WHERE DID YOU GRADUATE COLLEGE
19 FROM?

20 A. BELLARMINE COLLEGE IN LOUISVILLE,
21 KENTUCKY.

22 Q. AND WHAT WAS YOUR DEGREE?

23 A. B.A., BACHELOR OF ARTS.

24 Q. AND WHEN DID YOU GRADUATE?

25 A. 1961.

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4

1 Q. DID YOU TAKE ANY GRADUATE TRAINING?

2 A. NO.

3 Q. FROM THE TIME YOU GRADUATED TO THE
4 PRESENT TIME HAVE YOU TAKEN ANY GRADUATE TRAINING?

5 A. I ATTENDED THE ADVANCED MANAGEMENT
6 PROGRAM AT HARVARD.

7 Q. WHEN DID YOU DO THAT?

8 A. 1978.

9 Q. HOW LONG WAS THAT COURSE?

10 A. 13 WEEKS.

11 Q. ARE YOU A CERTIFIED PUBLIC ACCOUNTANT?

12 A. NO, I'M NOT.

13 Q. HAVE YOU EVER TAKEN THE TEST FOR
14 CERTIFIED PUBLIC ACCOUNTANT?

15 A. NO, I HAVE NOT.

16 Q. AFTER YOUR GRADUATION FROM COLLEGE
17 WHERE DID YOU GO TO WORK?

18 A. A SMALL PUBLIC ACCOUNTING FIRM IN
19 LOUISVILLE, LOUIS ACKERSON.

20 Q. THAT'S THE NAME OF THE FIRM?

21 A. LOUIS ACKERSON AND COMPANY.

22 Q. HOW LONG WERE YOU THERE, SIR?

23 A. 6 MONTHS.

24 Q. AND FROM THERE WHERE DID YOU WORK?

25 A. MCKESSON & ROBBINS WHOLESALE DRUG

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1 COMPANY.

2 Q. WHAT WAS YOUR JOB THERE?

3 A. ACCOUNTANT TRAINEE.

4 Q. HOW LONG WERE YOU THERE?

5 A. 2 YEARS.

6 Q. AND FROM THERE WHERE DID YOU GO?

7 A. BROWN & WILLIAMSON.

8 Q. THAT WOULD HAVE BEEN -- WOULD HAVE
9 BEEN WHAT YEAR ROUGHLY?

10 A. 1963.

11 Q. WHAT WAS YOUR POSITION AT THAT TIME?

12 A. JUNIOR ACCOUNTANT.

13 Q. WOULD YOU JUST DESCRIBE FOR ME, IF YOU
14 WOULD, BRIEFLY, THE SUBSEQUENT POSITIONS YOU HELD AT
15 BROWN & WILLIAMSON AND THE TIME PERIODS WHEN YOU HELD
16 THEM?

17 A. I HAD A NUMBER OF POSITIONS IN THE
18 GENERAL ACCOUNTING DEPARTMENT FOR A PERIOD OF 3 OR 4
19 YEARS, THEN I MOVED TO THE BUDGET DEPARTMENT AS JUNIOR
20 BUDGET ANALYST, AND AFTER THAT I BECAME SUPERVISOR IN
21 THE INTERNATIONAL ACCOUNTING DEPARTMENT.

22 SUBSEQUENT TO THAT I MOVED TO A
23 DIVERSIFIED COMPANY OF BROWN & WILLIAMSON IN SAINT LOUIS
24 AND BECAME THE CONTROLLER OF A SMALL SEA FOOD COMPANY.

25 AFTER THAT I RETURNED TO BROWN &

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1 WILLIAMSON AFTER ONE YEAR AND RETURNED TO BROWN &
2 WILLIAMSON AS A SPECIAL ANALYST.

3 AFTER ANOTHER YEAR I BECAME THE
4 MANAGER OF THE EXPORT ACCOUNTING DEPARTMENT.

5 AFTER THAT I BECAME MANAGER OF THE
6 BUDGET AND COST DEPARTMENT, AND AFTER 5 MONTHS AT THAT
7 POSITION I BECAME CONTROLLER OF BROWN & WILLIAMSON.

8 Q. AND WHEN WAS THAT, SIR?

9 A. THAT WAS 1975.

10 IN 1979 I BECAME A VICE-PRESIDENT. MY
11 TITLE WAS VICE-PRESIDENT AND CONTROLLER. A YEAR LATER I
12 BECAME THE VICE-PRESIDENT OF FINANCE. 2 YEARS LATER I
13 MOVED TO B.A.T.U.S. ON SPECIAL ASSIGNMENT.

14 Q. WHAT TIME FRAME ARE WE IN NOW?

15 A. I MOVED TO B.A.T.U.S. IN JANUARY OF
16 1982 ON SPECIAL ASSIGNMENT, HAD A NUMBER OF POSITIONS AT
17 B.A.T.U.S., CAME BACK TO BROWN & WILLIAMSON IN
18 SEPTEMBER, 1983, AS AGAIN THE VICE-PRESIDENT OF
19 FINANCE. I BECAME SENIOR VICE-PRESIDENT OF FINANCE AND
20 CHIEF FINANCIAL OFFICER IN JUNE 1984.

21 Q. AS VICE-PRESIDENT OF FINANCE BEGINNING
22 IN SEPTEMBER OF '83, TO WHOM DID YOU REPORT AT BROWN &
23 WILLIAMSON?

24 A. TO JOHN MCDONOUGH.

25 Q. WHAT WAS HIS TITLE?

1 A. SENIOR VICE-PRESIDENT OF FINANCE AND
2 CHIEF FINANCIAL OFFICER.

3 Q. AND DID YOU CONTINUE -- HOW LONG DID
4 YOU CONTINUE TO REPORT TO MR. MCDONOUGH?

5 A. UNTIL JUNE OF 1984.

6 Q. DID HE LEAVE BROWN & WILLIAMSON AT
7 THAT TIME?

8 A. YES.

9 Q. AND HE WENT TO B.A.T.U.S.?

10 A. THAT'S CORRECT.

11 Q. DURING THAT PERIOD WHEN YOU WERE
12 SENIOR -- WHEN YOU WERE V.P. OF FINANCE SEPTEMBER OF '83
13 THROUGH JUNE OF '84 WHO REPORTED TO YOU AT BROWN &
14 WILLIAMSON?

15 A. THE CONTROLLER, THE AUDIT MANAGER, THE
16 MANAGER OF FINANCIAL OPERATIONS, THE INTERNATIONAL
17 CONTROLLER AND THE CONTROLLER OF LEAF.

18 Q. THE CONTROLLER OF LEAF WAS MR. INGRAM?

19 A. YES.

20 Q. AND THE GENERAL CONTROLLER WAS MR.
21 BACON?

22 A. YES.

23 Q. WHO IS THE MANAGER OF FINANCIAL
24 OPERATIONS?

25 A. JIM ADAMS.

8

1 Q. AND DID MR. DIEBOLD ALSO REPORT TO
2 YOU?

3 A. I'M NOT SURE HE DID AT THAT TIME. HE
4 MAY HAVE. I'M NOT SURE.

5 Q. OKAY. HE MAY HAVE ALSO REPORTED TO
6 MR. MCDONOUGH?

7 A. EITHER MCDONOUGH OR TONY BACON.

8 Q. AND AFTER YOU BECAME SENIOR
9 VICE-PRESIDENT IN JUNE OF '84 DID THE SAME PEOPLE
10 CONTINUE TO REPORT TO YOU?

11 A. I KNOW THAT MR. DIEBOLD REPORTED TO ME
12 AT THAT TIME. AND THE REMAINDER OF THE PEOPLE -- THE
13 BEST I CAN REMEMBER WE DID NOT MAKE ANY CHANGES, THE
14 SAME PEOPLE REPORTED TO ME.

15 Q. SO MR. BACON CONTINUED TO REPORT TO
16 YOU AS WELL?

17 A. YES, YES.

18 Q. AND YOU HAD CONTINUED IN THESE
19 POSITIONS, SENIOR VICE-PRESIDENT, CHIEF FINANCIAL
20 OFFICER FROM JUNE OF '84 THROUGH THE END OF 1985?

21 A. YES.

22 Q. AND THE SAME PEOPLE CONTINUED TO
23 REPORT TO YOU THAT YOU DESCRIBED DURING THAT PERIOD?

24 A. THE ORGANIZATION HAS CHANGED IN THAT
25 TIME FRAME.

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1 Q. IT HAS?

2 A. YES.

3 Q. OKAY. CAN YOU JUST DESCRIBE FOR ME
4 BRIEFLY HOW IT CHANGED?

5 A. WELL, THE CREDIT DEPARTMENT REPORTED
6 TO MR. ADAMS. THE CREDIT DEPARTMENT NO LONGER REPORTS
7 TO THE FINANCE DEPARTMENT. THAT WAS ONE CHANGE.

8 IN ADDITION I HAVE REPORTING TO ME THE
9 PLANNING DEPARTMENT AND I ALSO HAVE REPORTING TO ME THE
10 M.I.S. DEPARTMENT.

11 Q. WHO WAS HEAD OF THE PLANNING
12 DEPARTMENT?

13 A. AT WHAT TIME?

14 Q. AT THE TIME THEY BEGAN TO REPORT TO
15 YOU.

16 A. TED PARRACK.

17 Q. AND WHEN DID MR. PARRACK BEGIN TO
18 REPORT TO YOU?

19 A. IT WAS IN EITHER JUNE OR JULY, 1986.

20 Q. WOULD YOU BRIEFLY DESCRIBE FOR ME THE
21 RESPONSIBILITIES THAT YOU HAD AT BROWN & WILLIAMSON AS
22 THE VICE-PRESIDENT OF FINANCE, SEPTEMBER '83 THROUGH
23 JUNE '84?

24 A. MY RESPONSIBILITIES WERE TO OVERSEE
25 ALL OF THE OPERATIONS THAT REPORTED TO ME AND WITH A

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10

1 HEAVY EMPHASIS ON CONTROL, REPORTING TO MR. MCDONOUGH
2 AND TO BE SUPPORTIVE OF THE SENIOR MANAGEMENT AT BROWN &
3 WILLIAMSON.

4 Q. OKAY. WHEN YOU SAY REPORT TO MR.
5 MCDONOUGH THAT'S BECAUSE HE WAS YOUR SUPERIOR AT BROWN &
6 WILLIAMSON AT THE TIME?

7 A. THAT'S CORRECT.

8 Q. DID YOUR RESPONSIBILITIES CHANGE IN
9 ANY WAY AFTER YOU BECAME SENIOR VICE-PRESIDENT AND CHIEF
10 FINANCIAL OFFICER IN JUNE OF '84?

11 A. YES, THEY DID.

12 Q. CAN YOU EXPLAIN HOW IT CHANGED?

13 A. WELL, I WAS THE CHIEF FINANCIAL
14 OFFICER RESPONSIBLE FOR THE FINANCIAL DECISIONS AND A
15 MEMBER OF THE BROWN & WILLIAMSON EXECUTIVE COMMITTEE.

16 Q. DID YOU ATTEND EXECUTIVE COMMITTEE
17 MEETINGS?

18 A. CERTAINLY.

19 Q. WERE THERE EXECUTIVE COMMITTEE
20 MEETINGS REGULARLY HELD?

21 A. YES.

22 Q. HOW REGULARLY?

23 A. GENERALLY ONCE A WEEK.

24 Q. AND WHO BESIDES YOURSELF WAS A MEMBER
25 OF THE EXECUTIVE COMMITTEE IN JULY OF '84?

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1 A. DR. HUGHES, MR. ALAR, MR. SANDEFUR.
2 THAT'S IT.

3 Q. PUTTING ASIDE FOR THE MOMENT DR.
4 HUGHES, DID THE MEMBERSHIP OF THE EXECUTIVE COMMITTEE
5 CHANGE FROM JULY OF '84 THROUGH DECEMBER OF '85?

6 A. THE MEMBERSHIP OF THE EXECUTIVE
7 COMMITTEE CHANGED SUBSEQUENTLY TO JUNE OF '84, BUT I
8 DON'T REMEMBER THE DATE.

9 Q. HOW DID IT CHANGE?

10 A. MR. BLOTT AND MR. LOWDENBECK WERE
11 ADDED TO THE EXECUTIVE COMMITTEE.

12 Q. DO YOU RECALL --

13 A. THERE WAS ONE OTHER PERSON ON THE
14 EXECUTIVE COMMITTEE. MR. DEWITT.

15 Q. WAS HE ORIGINALLY ON THE COMMITTEE?

16 A. YES.

17 Q. AND DO YOU RECALL WHETHER MR. BLOTT
18 WAS ADDED TO THE EXECUTIVE COMMITTEE MEMBERSHIP IN 1984?

19 A. I DON'T RECALL.

20 Q. WHAT ABOUT MR. LOWDENBECK -- DO YOU
21 RECALL WHETHER IT WAS '84 OR '85?

22 A. I DON'T RECALL.

23 Q. WHAT WERE MR. BLOTT'S
24 RESPONSIBILITIES AT THAT TIME?

25 A. JUNE OF 1984?

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1 Q. I'LL WITHDRAW IT, MR. HEGER, SINCE YOU
2 CAN'T REMEMBER EXACTLY WHEN HE WAS ADDED.

3 WAS ANYBODY ELSE PRESENT AT THE
4 EXECUTIVE COMMITTEE MEETINGS WHICH YOU ATTENDED OTHER
5 THAN MEMBERS OF THE EXECUTIVE COMMITTEE?

6 MR. KLOTZ: OBJECT TO THE FORM.

7 A. THERE GENERALLY ARE OTHER PEOPLE
8 PRESENT AT THE EXECUTIVE COMMITTEE MEETINGS.

9 Q. WAS ANYBODY REGULARLY IN ATTENDANCE?

10 A. NO.

11 Q. WERE THERE ANY MINUTES OR NOTES KEPT
12 OF THESE EXECUTIVE COMMITTEE MEETINGS?

13 A. IN REGARDS TO APPROVALS OF CAPITAL
14 EXPENDITURES, YES.

15 Q. ANY OTHER MATTERS THAT WERE ADDRESSED
16 BY THE EXECUTIVE COMMITTEE?

17 A. NOT THAT I CAN RECALL.

18 Q. THERE WAS NO MEMBER APPOINTED AS A
19 SECRETARY TO TAKE NOTES OR ANYTHING LIKE THAT?

20 A. MR. DEWITT WAS THE SECRETARY.

21 Q. OKAY. DID YOU TAKE NOTES AT ANY OF
22 THESE MEETINGS?

23 A. NOT THAT I RECALL.

24 Q. AFTER EXECUTIVE COMMITTEE MEETINGS
25 WERE ANY MINUTES OF THE MEETINGS PREPARED OR DRAFTS OF

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1 THOSE MINUTES?

2 A. MINUTES WERE PREPARED BACK IN SOME
3 TIME FRAME -- I'M NOT SURE OF THE DATES -- THAT WOULD
4 SPECIFY CERTAIN CAPITAL PROPOSALS WERE APPROVED.

5 Q. THAT WOULD BE THE EXTENT OF THE
6 MINUTES?

7 A. TO THE EXTENT THAT I CAN RECALL, YES.

8 Q. LET'S MARK AS HEGER EXHIBIT 1 FOR
9 IDENTIFICATION A DOCUMENT ENTITLED, "BROWN & WILLIAMSON
10 TOBACCO CORPORATION TOBACCO GROUP FINANCIAL REPORT
11 DECEMBER 1985," STAMP NUMBERS ARE S-1077 THROUGH 1121.

12 (WHEREUPON, HEGER DEPOSITION EXHIBIT 1
13 WAS MARKED FOR IDENTIFICATION.)

14 Q. CAN YOU IDENTIFY WHAT'S BEEN MARKED AS
15 HEGER EXHIBIT 1 FOR IDENTIFICATION?

16 A. THAT'S THIS DOCUMENT?

17 Q. YES, THE DOCUMENT -- YOU SEE THERE IS
18 A STAMP AT THE BOTTOM IN RED THERE THAT SAYS HEGER 1.

19 A. YES, GOT IT. YES, I CAN IDENTIFY
20 THIS DOCUMENT.

21 Q. WHAT IS IT, SIR?

22 A. IT'S THE MONTHLY FINANCIAL REPORT.

23 Q. AT BROWN & WILLIAMSON?

24 A. YES.

25 Q. BROWN & WILLIAMSON PREPARES A REPORT

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1 OF THIS TYPE EACH MONTH?

2 A. CORRECT.

3 Q. OKAY. AND IT'S PREPARED BY YOUR
4 DEPARTMENT?

5 A. YES.

6 Q. OKAY. DOES THE FINANCIAL REPORT FOR
7 DECEMBER 1985 REFLECT ALL THE FINAL YEAR END FINANCIAL
8 DATA?

9 A. THIS APPEARS TO BE THE FINAL REPORT.

10 Q. OKAY. AND IT WOULD, THEREFORE,
11 REFLECT ANY YEAR END LIFO ADJUSTMENTS; IS THAT CORRECT?

12 A. YES.

13 Q. TURN TO THE PAGE ENTITLED, "TOBACCO
14 GROUP MANAGEMENT INCOME STATEMENT DECEMBER, '85" STAMP
15 NUMBERS S-1084. DO YOU HAVE THAT, MR. HEGER?

16 A. (NODDED HEAD AFFIRMATIVELY.)

17 Q. WHAT DIVISIONS OR OTHER PROFIT CENTERS
18 MAKE UP THE TOBACCO GROUP WHICH IS REFERENCED AT THE
19 TITLE OF THIS PAGE?

20 A. THIS PAGE IS THE TOTAL TOBACCO GROUP.

21 Q. ARE THERE LIKE DIVISIONS OR PROFIT
22 CENTERS THAT COMPRISE THE GROUP?

23 A. YES, THAT ARE INCLUDED IN THIS REPORT.

24 Q. AND ARE THEY IDENTIFIED ON THIS PAGE
25 AS DOMESTIC INTERNATIONAL AND E.L.T.?

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1 A. YES.

2 Q. AND E.L.T. IS EXPORT LEAF TOBACCO; IS
3 THAT CORRECT?

4 A. CORRECT.

5 Q. IF YOU WOULD TURN TO THE PAGE
6 ENTITLED, "DOMESTIC SALES QUANTITIES, DECEMBER 1985,"
7 S-1091 IS THE STAMP NUMBER, THIS PAGE REFLECTS THE
8 QUANTITIES OF CIGARETTES AND S.T.P. PRODUCTS THAT WERE
9 SOLD AND WHICH ARE REFLECTED IN THE GROSS PAID SALES
10 DOMESTIC COLUMN ON THE MANAGEMENT INCOME STATEMENT?

11 A. YES.

12 Q. OKAY. THE THIRD LINE TOWARDS THE
13 BOTTOM OF THE CIGARETTE SECTION, DOMESTIC SALES
14 QUANTITIES, SHOWS A LINE ITEM FOR GENERICS. DO YOU SEE
15 THAT, SIR?

16 A. YES.

17 Q. WERE THERE ANY, IN EITHER 1984 OR
18 1985, INTERNATIONAL SALES OF GENERIC CIGARETTES
19 MANUFACTURED BY BROWN & WILLIAMSON?

20 A. NOT THAT I CAN REMEMBER.

21 Q. ALL THE SALES WERE BASICALLY DOMESTIC
22 FOR GENERICS?

23 A. YES.

24 Q. AT THE BOTTOM OF THE DOMESTIC SALES
25 QUANTITIES PAGE, THERE IS A SMALLER BOX ENTITLED S.T.P.

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1 PRODUCTS. WHAT DOES THAT REFER TO, SIR?

2 A. SPECIALTY TOBACCO PRODUCTS.

3 Q. THOSE ARE NON-CIGARETTE PRODUCTS?

4 A. CORRECT.

5 Q. OKAY. WHERE IT SHOWS IN PARENTHESES

6 IN M POUNDS, THE M STANDS FOR THOUSANDS; CORRECT?

7 A. YES.

8 Q. THAT'S THOUSANDS OF POUNDS OF FINISHED
9 GOODS AS OPPOSED TO THOUSANDS OF POUNDS OF TOBACCO
10 GOODS; IS THAT RIGHT?

11 A. THIS WOULD BE SALES OF FINISHED GOODS.

12 Q. OKAY. GOING DOWN THE PRODUCTS THAT
13 ARE LISTED THERE WHICH ARE NON-CIGARETTE, THAT'S PIPE --
14 IS PIPE TOBACCO?

15 A. YES.

16 Q. WHAT DOES LAREDO REFER TO?

17 A. LAREDO IS ROLL YOUR OWN CIGARETTE TYPE
18 PRODUCT.

19 Q. IT'S TOBACCO PRODUCT?

20 A. IT'S A TOBACCO PRODUCT.

21 Q. AND THEN IT SAYS ROLL YOUR OWN BELOW
22 LAREDO?

23 A. THAT IS ANOTHER ROLL YOUR OWN
24 CIGARETTE PRODUCT.

25 Q. AGAIN A TOBACCO --

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1 A. YES.

2 Q. CHEWING TOBACCO, I UNDERSTAND, AND
3 SNUFF IS ALSO TOBACCO PRODUCT?

4 A. YES, ALL TOBACCO PRODUCT.

5 Q. OKAY. THE WORDS "FANCY GOODS," DOES
6 THAT HAVE ANY APPLICATION TO THESE CATEGORIES?

7 A. YES.

8 Q. WHICH ONES?

9 A. ROLL YOUR OWN.

10 Q. WITH OR WITHOUT LAREDO, JUST ROLL YOUR
11 OWN?

12 A. JUST ROLL YOUR OWN.

13 Q. LET ME SHOW YOU WHAT'S BEEN
14 PREVIOUSLY MARKED AS BACON EXHIBIT 7.

15 MR. KLOTZ: DO YOU HAVE A COMPLETE SET
16 OF FINANCIAL STATEMENTS, BY THE WAY? I UNDERSTOOD OVER
17 THE LAST COUPLE OF DAYS THERE WAS AN ISSUE ABOUT WHETHER
18 YOU HAD ALL OF THEM OR NOT.

19 Q. IT'S MY UNDERSTANDING THAT THE
20 DECEMBER '84 FINANCIAL WE DO HAVE IS REDACTED.

21 MR. KLOTZ: YOU DO NOT HAVE AN
22 UNREDACTED DECEMBER 1984?

23 MR. TOPMAN: IS THAT RIGHT, JIM?

24 MR. CONDREN: IF YOU CAN HOLD ON A
25 SECOND, I WILL TELL YOU EXACTLY WHAT WE DON'T HAVE.

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18

1 MR. TOPMAN: REGARDING TOBACCO GROUP
2 FINANCIAL REPORTS.

3 MR. CONDREN: WE DO NOT HAVE
4 UNREDACTED COPIES OF THOSE REPORTS FOR JULY '84 THROUGH
5 AND INCLUDING APRIL '85, AND ALSO JUNE '85. WE HAVE ALL
6 OF THEM IN UNREDACTED FORM -- EXCUSE ME, IN REDACTED
7 FORM. WE HAVE ALL IN THE REDACTED FORM. WE DON'T HAVE
8 THOSE IN UNREDACTED FORM.

9 MR. KLOTZ: I WILL HAVE THOSE SENT OUT
10 FROM NEW YORK AIR EXPRESS. IF THERE IS ANY PROBLEM WE
11 WILL GET ANOTHER SET OF THEM.

12 MY UNDERSTANDING, INCIDENTALLY, IS I'M
13 TOLD WE THOUGHT WE PRODUCED THEM IN UNREDACTED FORM, BUT
14 I DON'T WANT TO MAKE AN ISSUE OUT OF THEM.

15 Q. LET ME JUST DIRECT YOUR ATTENTION TO
16 THE STAMP NUMBER PAGE 199085 ENTITLED, "1985 CALENDAR
17 YEAR USINGS."

18 UNDER THE WORDS SMOKING THERE IS A
19 LINE ITEM THAT SAYS, APPARENTLY ABBREVIATED, CIGARETTES
20 PER POUND. THEN IT HAS ACROSS FROM IT 400.

21 IS THAT A METHOD BY WHICH THE S.T.P.
22 PRODUCTS ARE CONVERTED INTO AN EQUIVALENT OF NUMBER OF
23 CIGARETTES?

24 MR. KLOTZ: OBJECT TO THE FORM.

25 HAVE YOU EVER SEEN THIS DOCUMENT

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1 BEFORE?

2 THE WITNESS: NO.

3 MR. KLOTZ: YOU SHOULD ANSWER THE
4 QUESTION WITHOUT REFERENCE TO THE DOCUMENT.

5 MR. TOPMAN: WHY?

6 MR. KLOTZ: UNLESS THE DOCUMENT MEANS
7 SOMETHING TO HIM.

8 MR. TOPMAN: I'M NOT INSTRUCTING HIM TO
9 WHAT TO DO. I'M JUST ASKING HIM A SIMPLE QUESTION.

10 A. I KNOW THERE ARE APPROXIMATELY 400
11 CIGARETTES TO A POUND OF TOBACCO. I DON'T KNOW WHAT
12 THIS DOCUMENT REFERS TO.

13 Q. NO, I'M NOT -- I UNDERSTAND YOU'VE
14 NEVER SEEN THE DOCUMENT BEFORE. THIS IS MY QUESTION.
15 MY QUESTION IS, TO CONVERT THE S.T.P. PRODUCTS THAT ARE
16 LISTED ON THE DOMESTIC SALES QUANTITY, IS THERE SORT OF
17 A RULE OF THUMB AT BROWN & WILLIAMSON THAT 400 POUNDS OF
18 THOSE PRODUCTS ARE EQUIVALENT TO A CERTAIN NUMBER OF
19 CIGARETTES?

20 A. FOR SPECIAL ANALYSIS PURPOSES, YES,
21 BUT NOT FOR ACCOUNTING.

22 Q. OKAY. AND IT'S 400 POUNDS OF THOSE
23 PRODUCTS THAT ARE EQUIVALENT TO A THOUSAND CIGARETTES?

24 A. 400 CIGARETTES TO A POUND OF TOBACCO.

25 Q. I SEE. SO THAT FOR EACH POUND OF

1 THESE S.T.P. PRODUCTS THAT WE SEE ON THE DOMESTIC SALES
2 QUANTITY HEGER 1, IT'S EQUIVALENT TO 400 CIGARETTES?

3 MR. KLOTZ: OBJECT TO THE FORM.

4 Q. USING THAT ANALYSIS RULE OF THUMB?

5 A. YES.

6 Q. THANK YOU.

7 DO YOU RECOGNIZE THE HANDWRITING ON
8 THIS PAGE, REFERRING TO BACON EXHIBIT 7?

9 A. YES.

10 Q. AND WHOSE HANDWRITING IS THAT?

11 A. CONRAD KLEIN.

12 Q. OKAY. IF YOU ARE -- STILL LOOKING AT
13 THE SAME PAGE IN BACON 7 ENTITLED, "1985 CALENDAR YEAR
14 USINGS" THERE IS ON THE BOTTOM HALF OF THE PAGE THE
15 ABBREVIATION STRP. CNT.

16 THAT STANDS FOR STRIP CONTENT?

17 A. YES.

18 Q. AND THE STRIP CONTENT NUMBERS USED
19 CALCULATE THE AMOUNT OF TOBACCO IN A GIVEN NUMBER OF
20 CIGARETTES?

21 MR. KLOTZ: OBJECT TO THE FORM.

22 A. NO.

23 Q. WOULD YOU EXPLAIN WHAT THE FUNCTIONAL
24 MEANING OF STRIP CONTENT IS?

25 A. AS FAR AS THIS SHEET OF PAPER I CAN'T.

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1 Q. OKAY. DO YOU HAVE A GENERAL
2 UNDERSTANDING OF THE TERM --

3 A. YES.

4 Q. -- AT BROWN & WILLIAMSON?

5 A. YOU BUY GREEN TOBACCO AND RE-DRIED IT
6 HAS SO MUCH OF A YIELD IN STRIP CONTENTS.

7 Q. OKAY. IF YOU LOOK ON THE SAME PAGE
8 IN FRONT OF YOU YOU SEE A LINE ITEM CALLED GREEN YIELD.
9 IS THAT THE FACTOR THAT IS CONVERTING THE RE-DRIED --
10 THAT IS USED TO CONVERT RE-DRIED USINGS INTO GREEN
11 USINGS?

12 MR. KLOTZ: OBJECT TO THE FORM.

13 A. IT APPEARS TO BE.

14 Q. OKAY. IN WHAT FASHION DOES THE STRIP
15 CONTENT CALCULATION DIFFER FROM THE GREEN YIELD
16 CALCULATION IF IT DOES?

17 MR. KLOTZ: OBJECT TO THE FORM. ARE
18 YOU ASKING HIM GENERALLY HOW A STRIP CONTENT CALCULATION
19 DIFFERS FROM GREEN YIELD CALCULATION?

20 MR. TOPMAN: YES.

21 MR. KLOTZ: YOU'RE NOT ASKING HIM TO
22 INTERPRET WHAT MR. KLEIN WAS DOING HERE?

23 MR. TOPMAN: NO.

24 MR. KLOTZ: FINE. DO YOU UNDERSTAND
25 THE QUESTION?

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1 A. WOULD YOU REPEAT THE QUESTION?

2 Q. SURE.

3 HOW DOES A STRIP CONTENT CALCULATION
4 DIFFER, IF IT DOES, FROM A GREEN YIELD CALCULATION?

5 A. IF WE'RE TRYING TO MAKE A
6 CALCULATION, IF WE'RE TALKING ABOUT GOING FROM GREEN TO
7 RE-DRIED OR FROM RE-DRIED TO GREEN, AND YOU USE THOSE
8 TERMS SYNONYMOUSLY, I DON'T BELIEVE THERE IS A
9 DIFFERENCE.

10 Q. THE DECEMBER 1985 MONTHLY FINANCIAL
11 REPORT HEGER EXHIBIT 1 CONTAINS ON THE MANAGEMENT INCOME
12 STATEMENT UNDER THE YEAR-TO-DATE HEADING COLUMNS HEADED
13 ACTUAL AND LAST YEAR.

14 THE ACTUAL COLUMN REFLECTS THE 1985
15 CALENDAR YEAR NUMBERS FOR MANAGEMENT INCOME STATEMENT;
16 CORRECT?

17 A. YES.

18 Q. AND THE LAST YEAR NUMBERS REFLECT THE
19 FINAL FIGURES FOR MANAGEMENT INCOMES FOR BROWN &
20 WILLIAMSON FOR THE CALENDAR YEAR 1984?

21 A. YES.

22 Q. AND AS TO THE '84 THING, THAT WOULD
23 ALSO INCLUDE THE ALL YEAR END ADJUSTMENTS THAT HAD BEEN
24 MADE FOR 1984?

25 A. YES.

1 Q. IF YOU WOULD, TURN TO THE PAGE
2 ENTITLED, "STATEMENT OF INTERNATIONAL PROFIT
3 CONTRIBUTION," STAMP NUMBERS S-10911 IN HEGER EXHIBIT 1.

4 A. PAGE 8?

5 Q. THE DOCUMENT IS INTERNALLY -- YES,
6 PAGE 5.

7 THERE IS A FIRST LINE ITEM ENTITLED,
8 "NET SALES VALUE." AND THEN IF YOU TURN OVER THAT PAGE,
9 THERE IS A PAGE ENTITLED, "INTERNATIONAL SALES
10 QUANTITIES."

11 A. YES.

12 Q. IS IT THE QUANTITIES UNDER THE
13 HEADING, "EXPORT-IMPORT AND CONTRACT" THAT RELATE TO THE
14 NET SALES VALUE FIGURE THAT APPEARS UNDER THE PROFIT
15 CONTRIBUTION STATEMENT FOR INTERNATIONAL?

16 A. YES.

17 Q. THE SALES QUANTITIES FOR INTERNATIONAL
18 ALSO CONTAINS A SECTION ENTITLED LICENSEE?

19 A. YES.

20 Q. DO THE SALES QUANTITY VOLUMES IN THAT
21 CATEGORY RELATE TO THE LICENSEE INCOME FIGURES THAT
22 APPEAR ON THE PROFIT CONTRIBUTION STATEMENT FOR
23 INTERNATIONAL ON THE STAMP NUMBER 1099?

24 A. YES.

25 Q. TURNING TO THE BACK OF THE PAGE

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 INTERNATIONAL SALES QUANTITIES, IT'S HEADED, "EXPORT-
2 IMPORT AND CONTRACT."

3 WHAT DO THOSE TERMS REFER TO?

4 A. EXPORT REFERS TO CIGARETTES
5 MANUFACTURED IN THE U.S. AND SOLD FOR EXPORT OUTSIDE OF
6 THE U.S.

7 IMPORTS ARE FOR PRODUCT OTHER THAN
8 BROWN & WILLIAMSON MANUFACTURE THAT WE IMPORT AND SELL
9 IN THE U.S. DUTY FREE MARKETS.

10 AND CONTRACT ARE THOSE CIGARETTES
11 WHICH ARE B&W OWNED TRADEMARKS THAT ARE MANUFACTURED
12 UNDER CONTRACT BY VARIOUS COMPANIES OUTSIDE THE UNITED
13 STATES.

14 Q. OKAY. AS TO THE EXPORT ELEMENT, WHEN
15 YOU SAY MANUFACTURE, IT'S MANUFACTURED BY BROWN &
16 WILLIAMSON?

17 A. YES.

18 Q. AS TO THE IMPORT SECTION, THAT IS
19 MANUFACTURED BY COMPANIES OTHER THAN BROWN & WILLIAMSON
20 OUTSIDE THE UNITED STATES?

21 A. YES.

22 Q. DO THOSE COMPANIES PURCHASE TOBACCO
23 FOR THOSE PRODUCTS FROM BROWN & WILLIAMSON OR EXPORT
24 LEAF?

25 A. POSSIBLY.

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1 Q. THEY ARE INDEPENDENT COMPANIES THOUGH
2 FROM BROWN & WILLIAMSON?

3 A. FROM BROWN & WILLIAMSON.

4 Q. THE CONTRACT PORTION OF THE
5 QUANTITIES, ARE THEY SOLD BY BROWN & WILLIAMSON?

6 A. YES.

7 Q. DOES BROWN & WILLIAMSON SUPPLY THE
8 TOBACCO TO THOSE CONTRACT MANUFACTURERS?

9 A. PART OF THE TOBACCO.

10 Q. AND THEY BUY THE REST OF THE TOBACCO
11 FROM OTHER THIRD PARTIES?

12 A. YES.

13 Q. LOOKING AT THE SCHEDULE CAN YOU
14 IDENTIFY WHICH PORTION OF IT RELATES TO EXPORT, TO
15 IMPORT AND TO CONTRACT?

16 A. WELL, THE IMPORT IS CLEAR. IT'S
17 MARKED.

18 Q. RIGHT. THAT IS A SEPARATE LINE ITEM?

19 A. YES. THE EXPORT AND CONTRACT ARE
20 LUMPED TOGETHER IN THE COLUMNS, IN ALL THE COLUMNS SO
21 THEY CANNOT BE IDENTIFIED FROM THIS REPORT.

22 Q. IN OTHER WORDS, THEY ARE BOTH INCLUDED
23 UNDER THE TOTAL B&W BRANDS AND THE TOTAL BAT BRANDS AND
24 THE TOTAL MOOREGATE BRANDS?

25 A. YES.

1 Q. DOES THE REGIONAL SUMMARY DO ANY
2 BREAKOUT ALONG ANY OF THOSE LINES BETWEEN EXPORT, IMPORT
3 AND CONTRACT?

4 A. NO. SAME NUMBERS, WHICH BREAKS IT OUT
5 BY BRAND.

6 Q. I MEANT THE REGIONAL SUMMARY THAT IS
7 BY COUNTRY IT APPEARS, STARTING WITH THE FAR EAST, THAT
8 TYPE OF THING, THAT DOESN'T --

9 A. DOES NOT.

10 Q. -- TAKE US DOWN THE ROAD AT ALL?

11 A. DOESN'T. DOESN'T HELP.

12 Q. DOES THE FINANCIAL REPORT, MONTHLY
13 FINANCIAL REPORT REFLECT ANY DATA IN IT WHICH WOULD
14 ASSIST IN BREAKING OUT THE 30 CATEGORIES?

15 A. NO, IT DOES NOT.

16 Q. WHEN A CONTRACT MANUFACTURER MAY
17 OBTAIN SOME OF HIS TOBACCO FROM BROWN & WILLIAMSON HE
18 BUYS IT FROM THE COMPANY?

19 A. YES.

20 Q. LIKE A REGULAR INDEPENDENT THIRD
21 PARTY?

22 A. YES.

23 Q. THAT'S TRUE FOR IMPORT ALSO, TO THE
24 EXTENT THEY GET TOBACCO?

25 A. YES.

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1 Q. ARE THERE ANY DOCUMENTS THAT WOULD
2 BREAK OUT THESE 3 CATEGORIES OF SALES?

3 A. YES.

4 Q. WHAT WOULD THEY BE IDENTIFIED AS OR
5 CALLED?

6 A. THERE IS -- I DON'T KNOW WHAT THE
7 TERMINOLOGY OF THE REPORT WOULD BE. THERE WOULD BE
8 SEVERAL REPORTS.

9 Q. DO ANY OF THEM HAVE NAMES?

10 A. WELL, IT WOULD BE VARIOUS
11 INTERNATIONAL REPORTS ON SALES QUANTITIES.

12 Q. I SEE. IN THE 5-YEAR PLANS THAT
13 BROWN & WILLIAMSON DOES, WHEN THEY REPORT EXPORT DOES
14 THAT -- IS THAT A TERM THAT COVERS ALL 3 CATEGORIES OR
15 IS IT SIMPLY EXPORT?

16 A. GENERALLY EXPORT AND CONTRACT ARE
17 LUMPED TOGETHER.

18 Q. GOING DOWN TO THE SECTION BELOW CALLED
19 LICENSEE ON THE SALE PAGE INTERNATIONAL SALES
20 QUANTITIES --

21 A. YES.

22 Q. -- WOULD YOU DESCRIBE FOR ME WHAT THAT
23 TERM MEANS?

24 A. WOULD YOU REPEAT THE QUESTION?

25 Q. YES. ON THE PAGE HEADED,

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1 "INTERNATIONAL SALES QUANTITIES" IN HEGER 1 THERE IS A
2 BOX FOR -- ENTITLED, "LICENSEE." WHAT DOES THAT MEAN?

3 A. THESE ARE OUR SALES OF BROWN &
4 WILLIAMSON OWNED TRADEMARKS BY LICENSEES, LICENSEES THAT
5 MANUFACTURE AND SELL THE PRODUCTS UNDER SOME LICENSEE
6 AGREEMENT.

7 Q. THESE ARE PEOPLE THAT ARE OUTSIDE THE
8 UNITED STATES?

9 A. YES.

10 Q. AND IF THEY USED TOBACCO THEY GET
11 FROM BROWN & WILLIAMSON OR E.L.T., THEY JUST BUY IT LIKE
12 THIRD PARTIES?

13 A. YES.

14 Q. WOULD YOU TURN TO THE PAGE ENTITLED,
15 "EXPORT LEAF TOBACCO STATEMENT OF PROFIT CONTRIBUTION"
16 ON HEGER 1?

17 A. YES.

18 Q. IT'S HEADED -- AT THE TOP THERE IS A
19 SECTION CALLED NET SALES POUNDS M. THAT'S POUNDS OF
20 TOBACCO IN THOUSANDS?

21 A. YES.

22 Q. DOES THAT REFLECT GREEN OR RE-DRIED
23 TOBACCO?

24 A. THAT IS RE-DRIED TOBACCO.

25 Q. OKAY. THERE ARE SALES TO B.W.T., THE
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1 FIRST ITEM THAT'S BROWN & WILLIAMSON; IS THAT RIGHT?

2 A. YES.

3 Q. AND THAT'S BASICALLY THEN JUST A
4 TRANSFER OF THE TOBACCO FROM EXPORT LEAF'S INVENTORY TO
5 BROWN & WILLIAMSON'S INVENTORY?

6 A. YES.

7 Q. WHAT DOES SPECIAL ACCOUNTS, WHICH IS
8 THE NEXT LINE ITEM REFER TO?

9 A. THOSE ARE BAT ASSOCIATED COMPANIES
10 THAT ARE FAIRLY LARGE ASSOCIATED COMPANIES.

11 Q. WHAT KIND OF TRANSACTION OR
12 TRANSACTIONS DO THEY GENERALLY HAVE WITH E.L.T. SO THEY
13 FORM A CATEGORY CALLED SPECIAL ACCOUNTS?

14 A. THEY ARE CUSTOMERS WHO GENERALLY GIVE
15 AN ORDER TO E.L.T. TO BUY AND PROCESS TOBACCO FOR THEM,
16 AND THE TOBACCO IS GENERALLY SHIPPED AS SOON AS IT'S
17 PROCESSED.

18 Q. SO IT GOES INTO E.L.T.'S TOBACCO
19 INVENTORY, THEN AFTER THEY PROCESS IT THEY TAKE IT OUT
20 OF THE INVENTORY?

21 A. CORRECT.

22 Q. THE NEXT LINE ITEM IS CALLED STOCK
23 PILE?

24 A. YES.

25 Q. CAN YOU EXPLAIN WHAT THAT REFERS TO?

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1 A. THESE ARE ALSO BAT ASSOCIATED
2 COMPANIES, GENERALLY SMALL ASSOCIATED COMPANIES THAT
3 ELECT -- THAT ORDER THEIR TOBACCO THE SAME WAY THAT
4 SPECIAL ACCOUNTS DO BUT ELECT TO HOLD THEIR TOBACCO IN
5 E.L.T. ACCOUNTS UNTIL THEY NEED IT.

6 Q. SO THAT WHEN THEY NEED IT, IT THEN
7 GETS ENTERED INTO THE NET SALES COLUMN?

8 A. YES.

9 Q. THEN AGAIN IT'S SIMILAR; IN OTHER
10 WORDS, THE WAY THEY TREAT THE LEAF INVENTORY THAT THEY
11 DO FOR SPECIAL ACCOUNTS?

12 A. YES.

13 Q. IS THERE ANY PREDOMINANT NUMBER IN THE
14 CATEGORY OF OTHER?

15 A. THESE ARE VERY FEW NON-RELATED
16 CUSTOMERS THAT E.L.T. SELLS TOBACCO TO.

17 Q. SO THAT REFLECTS A MOVEMENT OF
18 E.L.T.'S INVENTORY OUT OF E.L.T. TO ANOTHER COMPANY?

19 A. YES.

20 Q. DO YOU KNOW WHETHER THE E.L.T. CHARGES
21 THE SPECIAL ACCOUNTS THE SAME BUYING AND DRYING RATE OR
22 FEE THAT IT CHARGES TO BROWN & WILLIAMSON?

23 A. WOULD YOU REPEAT THE QUESTION?

24 Q. DOES OR DID E.L.T. CHARGE THE SPECIAL
25 ACCOUNTS THE SAME BUYING AND DRYING FEE THAT IT CHARGED

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1 BROWN & WILLIAMSON?

2 A. TO THE BEST OF MY KNOWLEDGE, YES.

3 Q. WOULD THAT ALSO BE TRUE FOR THE
4 STOCKPILE ACCOUNTS AS WELL?

5 A. YES.

6 Q. AND ALSO TO THE OTHER ACCOUNTS?

7 A. YES.

8 Q. ON THE EXPORT LEAF STATEMENT OF
9 PROFIT CONTRIBUTION THERE IS A LINE ITEM CALLED, "PROFIT
10 CONTRIBUTION (REVISED BASIS)."

11 WHAT DOES THE REVISED BASIS REFER TO?

12 A. I DON'T RECALL.

13 Q. DO YOU KNOW WHAT THE BUYING AND DRYING
14 RATE THAT E.L.T. CHARGED IN 1985?

15 A. NO.

16 Q. SAME QUESTION FOR 1984?

17 A. NO.

18 Q. UNDER THE E.L.T. PROFIT CONTRIBUTION
19 SHEET THERE IS A LINE ITEM CALLED, "FISCAL/CALENDAR
20 BUDGET ADJUSTMENT."

21 DO YOU KNOW WHAT THAT REFERS TO?

22 A. THERE ARE -- THERE WERE 2 BUDGETS
23 MADE ANNUALLY FOR EXPORT LEAF, ONE ON A CROP YEAR BASIS
24 AND ONE ON A CALENDAR YEAR BASIS. THIS IS SIMPLY AN
25 ADJUSTMENT TO BRING THE CROP YEAR BUDGET TO THE CALENDAR

1 YEAR BUDGET.

2 Q. THE CROP YEAR BUDGET, DOES THAT RELATE
3 TO E.L.T.'S FISCAL YEAR?

4 A. YES.

5 Q. AND THE FISCAL YEAR IS JULY 1 THROUGH
6 JUNE 30?

7 A. YES.

8 Q. THE MANAGEMENT INCOME STATEMENT STAMP
9 NUMBERS S-1084 OF HEGER 1 CONTAINS A LINE ITEM THERE
10 WHICH SAYS, "NBU LIFO OTHER."

11 THEN IF YOU WOULD, THE CATEGORY OF
12 PRODUCTS THAT ARE LISTED IN DOMESTIC SALES QUANTITIES IN
13 THOSE CIGARETTES USED TOBACCO WHICH WOULD BE COVERED BY
14 THE NBU FIGURES THAT ARE REFLECTED THERE; IS THAT
15 CORRECT?

16 MR. KLOTZ: OBJECT TO THE FORM.

17 A. RESTATE YOUR QUESTION.

18 Q. DOES THE NBU LIFO OTHER FIGURE APPLY
19 TO AN NBU POOL WHICH INCLUDED LEAF TOBACCO FROM WHICH
20 THE CATEGORY OF DOMESTIC SALES QUANTITY CIGARETTES WERE
21 MANUFACTURED?

22 MR. KLOTZ: OBJECT TO THE FORM.

23 A. I DON'T UNDERSTAND THE QUESTION.

24 Q. OKAY. THE NBU CALCULATION WAS BASED
25 UPON A NATURAL BUSINESS UNIT POOL; CORRECT?

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1 A. THAT'S CORRECT.

2 Q. AND ONE OF THE ELEMENTS IN THE POOL
3 WAS LEAF TOBACCO INVENTORY?

4 A. THAT'S CORRECT.

5 Q. AND MY QUESTION IS THAT THE
6 CIGARETTES OF THE CATEGORY THAT FALL UNDER DOMESTIC
7 SALES QUANTITIES USED LEAF TOBACCO THAT WOULD BE IN THAT
8 INVENTORY?

9 A. IF THE TOBACCO WAS USED IT'S NOT IN
10 THE INVENTORY.

11 Q. THAT CAME FROM THE INVENTORY?

12 A. CERTAINLY.

13 Q. OKAY. THAT WAS MY QUESTION.

14 IS THAT ALSO TRUE FOR THE S.T.P.
15 PRODUCTS THAT ARE AT THE BOTTOM OF THE SAME PAGE?

16 A. YES.

17 Q. TURNING TO THE INTERNATIONAL QUANTITY
18 PAGE, STAMP NUMBER 1100, IS THAT ALSO TRUE FOR
19 CIGARETTES MANUFACTURED BY BROWN & WILLIAMSON FOR
20 EXPORT?

21 A. YES.

22 Q. IS IT ALSO TRUE FOR THE CIGARETTES
23 MANUFACTURED BY OTHERS FOR IMPORT?

24 MR. KLOTZ: OBJECT TO THE FORM.

25 A. ONLY IF BROWN & WILLIAMSON HELD SOME
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1 OF THAT TOBACCO IN ITS INVENTORY.

2 Q. AM I CORRECT THOUGH THAT THE TOBACCO
3 THEN GETS SOLD TO THESE OTHER COMPANIES WHO MANUFACTURE
4 IT; CORRECT?

5 A. YES.

6 Q. SO THAT THE TOBACCO THAT THOSE PEOPLE
7 ARE USING IS THEN OWNED BY THE PEOPLE THAT ARE DOING
8 THE MANUFACTURING?

9 A. YES.

10 Q. AND THAT'S ALSO TRUE FOR THE CONTRACT
11 CATEGORY?

12 A. YES.

13 Q. AND THE LICENSEES ALSO USE THEIR OWN
14 TOBACCO OR TOBACCO THEY'VE INDEPENDENTLY BROUGHT FROM
15 BROWN & WILLIAMSON IN MANUFACTURING THEIRS?

16 A. YES, OR OTHERS.

17 Q. OR OTHERS.

18 YOUR ANSWERS WOULD BE THE SAME FOR
19 1984 AND THE NBU EXPENSE AS WELL?

20 MR. KLOTZ: OBJECT TO THE FORM.

21 A. NO.

22 Q. HOW WOULD THEY BE DIFFERENT?

23 A. THERE WAS NO NBU IN 1984.

24 SORRY I'M MIXED UP ON YEARS. THERE

25 WAS -- IT WOULD BE THE SAME, YES.

1 Q. TURNING TO EXPORT --

2 MR. KLOTZ: WHAT PAGE ARE WE ON?

3 MR. TOPMAN: EXPORT STATEMENT OF
4 PROFIT CONTRIBUTION.

5 MR. CONDREN: 1105.

6 Q. NET SALES IN POUND.

7 A. OKAY.

8 Q. TO THE EXTENT THERE WAS SALES BY
9 BROWN & WILLIAMSON TO EITHER THE CONTRACT MANUFACTURERS
10 OR THE IMPORTERS, THAT WOULD BE REFLECTED IN THIS COLUMN
11 NET SALE POUNDS PER THOUSAND FOR EXPORT LEAF?

12 A. YES.

13 Q. OKAY. AND THE INVENTORY FROM WHICH
14 THE TOBACCO WAS SOLD BY E.L.T. WAS SUBJECT IN '84 AND
15 '85 TO THE NATURAL BUSINESS UNIT POOL?

16 MR. KLOTZ: OBJECT TO THE FORM.

17 A. NOT IN 1984.

18 Q. E.L.T.'S LEAF INVENTORY WAS A SEPARATE
19 POOL IN 1984 FROM THE NBU POOL?

20 A. NO.

21 Q. IT WAS PART OF THE NBU POOL?

22 A. AT THE END OF THE YEAR 1984, YES.

23 Q. AND IN CALCULATING THE NBU FIGURES
24 FOR 1984, THE MOVEMENT IN THE E.L.T. TOBACCO INVENTORY
25 FOR THE CALENDAR YEAR 1984 WAS TAKEN INTO CONSIDERATION?

1 A. THE YEAR END INVENTORIES WERE TAKEN
2 INTO CONSIDERATION.

3 Q. OKAY. THE BEGINNING INVENTORY WAS
4 NOT?

5 A. NO.

6 Q. IN CALCULATING THE NBU EXPENSE HOW
7 DID BROWN & WILLIAMSON DETERMINE INVENTORY MOVEMENT
8 THAT WAS SUBJECT TO THAT?

9 A. THE LIFO IS BASED ON THE END OF YEAR
10 INVENTORY. AS FAR AS THE DETAILED CALCULATION, I DON'T
11 KNOW.

12 Q. AIL RIGHT. IS THE FINANCIAL DATA THAT
13 APPEARS IN THE MONTHLY FINANCIAL REPORT OF BROWN &
14 WILLIAMSON CONSOLIDATED IN ANY FASHION WITH FINANCIAL
15 DATA OF EITHER BAT INDUSTRIES OR B.A.T.U.S.?

16 A. PARTS OF IT ARE.

17 Q. OKAY. WITH BOTH COMPANIES OR JUST
18 ONE?

19 A. I'M ONLY FAMILIAR WITH B.A.T.U.S.

20 Q. WHICH PARTS ARE CONSOLIDATED?

21 A. SUMMARY INFORMATION SUCH AS SALES.

22 Q. SALES DOLLARS OR SALES QUANTITIES?

23 A. BOTH.

24 Q. ARE ANY OF THE B&W EXPENSES
25 CONSOLIDATED AT B.A.T.U.S.?

1 A. CONSOLIDATED INTO THE B.A.T.U.S.
2 ACCOUNTS?

3 Q. YES.

4 A. NO.

5 Q. WHEN I SAY CONSOLIDATED THAT'S WHAT I
6 I MEANT. IN OTHER WORDS, IS THERE A CONSOLIDATED
7 FINANCIAL ISSUE BY B.A.T.U.S. THAT INCORPORATES ANY OF
8 THE FINANCIAL DATA THAT'S IN THE MONTHLY FINANCIAL
9 REPORT OF BROWN & WILLIAMSON?

10 A. B.A.T.U.S. WILL INCLUDE IN THEIR
11 REPORT TOTAL B.A.T.U.S. SALES WHICH INCLUDE BROWN &
12 WILLIAMSON AND WHICH WILL BE MARKED AS TOBACCO SALES.

13 Q. OKAY. BUT THEY DO NOT CONSOLIDATE THE
14 FINANCIAL STATEMENTS OF BROWN & WILLIAMSON WITH THAT OF
15 B.A.T.U.S.?

16 A. NOT AS AN INTEGRAL PART OF ANY
17 CONSOLIDATION THAT I'M AWARE OF.

18 Q. IT'S BEEN PREVIOUSLY MARKED AS ECKMANN
19 EXHIBIT 7 FOR IDENTIFICATION. CAN YOU IDENTIFY THE
20 ECKMANN EXHIBIT 7, MR. HEGER?

21 A. YES.

22 Q. WHAT IS IT, SIR?

23 A. IT'S THE FINANCIAL REPORT FOR DECEMBER
24 1984.

25 Q. AND IT CONTAINS THE FINAL FINANCIAL
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1 DATA INCLUDING ALL YOUR END ADJUSTMENTS FOR THE YEAR
2 1984 AT LEAST INSOFAR AS NOT REDACTED?

3 A. YES. THIS REPORT DOES NOT INCLUDE THE
4 NBU LIFO ADJUSTMENT I NOTICED.

5 Q. THIS REPORT MEANING ECKMANN 7?

6 A. YES.

7 Q. AND IN FACT THERE WAS AN NBU LIFO
8 ADJUSTMENT FOR '84?

9 A. YES.

10 Q. THERE IS ALSO A FIGURE CALLED LAST
11 YEAR?

12 A. YES.

13 Q. IN THE ECKMANN 7?

14 A. YES.

15 Q. AND THAT REFERS TO THE FINAL FIGURES
16 FOR 1983 CALENDAR YEAR FOR BROWN & WILLIAMSON?

17 A. IT SHOULD.

18 Q. DOES THE 1984 DECEMBER MONTHLY
19 FINANCIAL REPORT REFLECT THE YEAR END ADJUSTMENT TO THE
20 LEAF LIFO RATE AS OPPOSED TO THE NBU FIGURES?

21 A. UNDER THE LIFO METHOD BEING EMPLOYED,
22 YES.

23 CAN WE TAKE A SHORT BREAK?

24 (WHEREUPON, A BREAK WAS THEN TAKEN.)

25 Q. LET'S MARK AS HEGER 2 AND 3 THE

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1 DECEMBER 31ST, 1984 CONSOLIDATED INCOME STATEMENT FOR
2 BROWN & WILLIAMSON AND CONSOLIDATED SUBSIDIARY.

3 MR. CONDREN: 44024.

4 (DISCUSSION OFF THE RECORD.)

5 MR. TOPMAN: LET ME REDO THE
6 DESIGNATION OF THE NUMBERS. IT'S 92251 THROUGH 56 THEN
7 THERE IS A STATEMENT OF RETAINED EARNINGS WHICH IS
8 172416. IT APPEARS THAT THE LAST PAGE HAS BEEN ADDED
9 BECAUSE THE PRIOR PAGE WHICH IS THE STATEMENT RETAINED
10 EARNINGS WAS REDACTED.

11 MR. KLOTZ: THAT'S 2.

12 (WHEREUPON, HEGER DEPOSITION EXHIBIT 2
13 WAS MARKED FOR IDENTIFICATION.)

14 Q. CAN YOU IDENTIFY THE DOCUMENT, MR.
15 HEGER, HEGER 2?

16 A. YES.

17 Q. WHAT IS THAT, SIR?

18 A. IT'S A CONSOLIDATED INCOME STATEMENT
19 AS OF DECEMBER 31ST 1984, BROWN & WILLIAMSON TOBACCO
20 CORPORATION.

21 Q. WHEN IT REFERS TO AT THE TOP
22 CONSOLIDATED SUBSIDIARY TO WHAT IS THAT A REFERENCE?

23 A. I BELIEVE THAT MEANS SUBSIDIARIES
24 LIKE OUR INTERNATIONAL SALES CORPORATION.

25 Q. IS THAT REFLECTED SEPARATELY IN THE
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1 INCOME STATEMENT?

2 A. NO.

3 Q. IN THE --

4 A. IT ALSO INCLUDES THE EQUITY AND
5 EARNINGS AND LOSSES OF THE COAL CORPORATION.

6 Q. HOW DID YOU IDENTIFY THAT, MR. HEGER?

7 A. I SEE IT ON PAGE 5.

8 Q. WHAT DID THE COAL CORPORATION DO?

9 A. IT WAS -- IT SOLD -- IT WAS A CHAIN OF
10 FOOD STORES AND DEPARTMENT STORES.

11 Q. THE TITLE OF THE INCOME STATEMENT SAYS
12 THAT IT EXCLUDES CERTAIN THINGS?

13 A. YES.

14 Q. IT SAYS FOR ONE E.L.T., WHICH I GATHER
15 IS EXPORT LEAF TOBACCO?

16 A. YES.

17 Q. IT THEN PROCEEDS TO SAY OVERSEAS
18 TOBACCO EUROPE AND ASIA. TO WHAT DO THOSE REFER THAT
19 ARE BEING EXCLUDED?

20 A. OVERSEAS TOBACCO, EUROPE AND ASIA ARE
21 SEPARATE COMPANIES THAT ARE NOT CONSOLIDATED INTO THIS
22 STATEMENT.

23 Q. ARE THEY OWNED BY BROWN & WILLIAMSON?

24 A. YES.

25 Q. DO YOU KNOW WHY THOSE COMPANIES WERE

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1 EXCLUDED FROM THE PREPARATION OF THIS CONSOLIDATED
2 INCOME STATEMENT?

3 A. I BELIEVE IT'S MECHANICS WITH THE
4 COMPUTER.

5 Q. I SEE. IN OTHER WORDS, THERE WAS A
6 CONSOLIDATED INCOME STATEMENT THAT INCLUDES THEM AS
7 WELL?

8 Q. MR. KLOTZ: OBJECT TO THE FORM.

9 A. I'M NOT SURE.

10 Q. THE FIGURES AND DATA THAT APPEAR IN
11 THE CONSOLIDATED INCOME STATEMENT HEGER EXHIBIT 2, FOR
12 EXAMPLE, FOR THE YEAR ENDED 1984 FLOW INTO THE DECEMBER
13 '84 MONTHLY FINANCIAL REPORTS; IS THAT RIGHT?

14 A. YES.

15 Q. JUST GENERALLY AND BRIEFLY CAN YOU
16 JUST TELL ME WHAT OVERSEAS TOBACCO EUROPE AND ASIA DO OR
17 DID IN 1984?

18 A. I DON'T BELIEVE OVERSEAS TOBACCO DID
19 ANYTHING. I AM NOT AWARE OF ANY ACTIVITY. EUROPE AND
20 ASIA ARE -- WE HAVE EXPENSES RUNNING THROUGH THOSE
21 ACCOUNTS FOR SOME TAX REGULATIONS IN HONG KONG AND
22 BELGIUM BUT AS FAR AS -- AGAIN, THAT'S THE ONLY PURPOSE
23 FOR THEIR EXISTENCE.

24 Q. THEY DON'T HAVE ANY REAL OPERATIONAL--

25 A. NO.

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1 Q. LET'S MARK AS HEGER EXHIBIT 3 FOR
2 IDENTIFICATION CONSOLIDATED INCOME STATEMENT DECEMBER
3 31, 1985, STAMP NUMBER 182578 THROUGH '84.

4 (WHEREUPON, HEGER DEPOSITION EXHIBIT 3
5 WAS MARKED FOR IDENTIFICATION)

6 Q. CAN YOU IDENTIFY WHAT'S BEEN MARKED
7 AS HEGER EXHIBIT 3?

8 A. YES.

9 Q. AND WHAT IS IT, SIR?

10 A. IT'S A CONSOLIDATED INCOME STATEMENT
11 AS OF DECEMBER 31ST, 1985 FOR BROWN & WILLIAMSON TOBACCO
12 CORPORATION.

13 Q. AND THE FIGURES AND DATA THAT ARE HERE
14 FLOW INTO THE DECEMBER '85 FINANCIAL REPORT?

15 A. YES.

16 Q. ON PAGE 4 OF HEGER 3 THERE IS A LINE
17 ITEM UNDER EXPORT LEAF TOBACCO SHOWING, "COMMISSION
18 EXPENSE-BAT."

19 CAN YOU TELL ME WHAT THAT REPRESENTS,
20 PLEASE, MR. HEGER?

21 A. THAT IS A COMMISSION PAID TO BAT FOR
22 THE WORK THEY DO IN ASSISTING E.L.T. TO SELL LEAF
23 TOBACCO TO ASSOCIATED COMPANIES.

24 Q. UNDER THE LEAF LIFO EXPENSE LINE ITEM,
25 IT SHOWS FOR 1985; CORRECT?

1 A. YES.

2 Q. WHEREAS FOR THE PRIOR YEAR ENDED
3 DECEMBER 31, 1984, IT SHOWS IN THE LAST COLUMN THAT THE
4 SAME EXPENSE LEAF LIFO WAS \$1,848,258; CORRECT?

5 A. FAVORABLE FROM BUDGET VERSUS LAST
6 YEAR.

7 Q. RIGHT.

8 A. YES.

9 Q. SO WHEN YOU TAKE THAT AS A FAVORABLE
10 VARIANCE THAT INDICATES THAT IN 1984 THAT E.L.T. IN FACT
11 HAD A LEAF LIFO EXPENSE OF 1,848,258?

12 A. YES.

13 Q. DO YOU KNOW WHY E.L.T. HAD SUCH AN
14 EXPENSE IN 1984 BUT DID NOT HAVE ANY SUCH EXPENSE ON
15 THIS LINE ITEM FOR DECEMBER, YEAR ENDING DECEMBER 1985?

16 A. YES.

17 Q. CAN YOU EXPLAIN THAT, PLEASE?

18 A. YES, I MADE THE DECISION THAT
19 ALLOCATING, WHICH IS -- THIS IS NOTHING BUT AN
20 ALLOCATION OF LIFO TO E.L.T. WAS CONFUSING AS FAR AS
21 MANAGEMENT ACCOUNTS SINCE IT DOESN'T MAKE ANY ADDITIONAL
22 EXPENSE OR INCOME TO THE COMPANY, AND IT WAS SIMPLY AN
23 ALLOCATION. I FOUND THAT IT WAS A CONFUSING ITEM AND I
24 DECIDED TO QUIT ALLOCATING ANY LIFO TO E.L.T.

25 Q. WHEN YOU SAY ALLOCATING IN 1984 THAT

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1 AMOUNT WAS ALLOCATED OUT OF THE TOTAL NBU LIFO EXPENSE;
2 IS THAT CORRECT?

3 A. NO.

4 Q. WHAT WAS IT ALLOCATED FROM?

5 A. THIS WAS ALLOCATED PRIOR TO MOVING TO
6 A DIFFERENT ACCOUNTING METHODOLOGY WHEN WE MOVED TO THE
7 NATURAL BUSINESS UNIT IN 1983. YOU SEE THERE WAS NO
8 EXPENSE IN 1984.

9 MR. KLOTZ: YOU'RE LOOKING AT '85?

10 Q. I THINK THAT --

11 A. SORRY. REPEAT YOUR QUESTION, PLEASE.

12 Q. LET ME HAVE HER READ IT BACK.

13 (WHEREUPON, THE REPORTER THEN READ THE
14 RECORD.)

15 A. IN 1984 THE LIFO PROVISION WAS BASED
16 ON THE LIFO METHODOLOGY BEING USED BY BROWN & WILLIAMSON
17 BEFORE ANY CONVERSION TO THE NATURAL BUSINESS UNIT
18 ALLOCATION OF LIFO METHOD OF ACCOUNTING.

19 Q. COULD YOU READ BACK MR. HEGER'S
20 ANSWER, PLEASE?

21 (WHEREUPON, THE REPORTER THEN READ
22 THE RECORD.)

23 A. WE'RE DEALING WITH 2 OR 3 QUESTIONS
24 HERE. FIRST AN ALLOCATION OF LIFO WAS MADE TO E.L.T. IN
25 1984 BASED ON THE LIFO METHODOLOGY BEING USED AT THAT

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1 TIME WHICH WAS LIFO UNDER MULTIPLE POOL, AND THAT IS THE
2 NUMBER REFLECTED IN THIS STATEMENT.

3 BROWN & WILLIAMSON DID NOT CONVERT TO
4 THE NATURAL BUSINESS UNIT METHODOLOGY OF LIFO UNTIL
5 AFTER THESE STATEMENTS WERE PUBLISHED. AS FAR AS THE
6 E.L.T. NUMBER, BECAUSE THAT'S THE SAME NUMBER THAT'S IN
7 THIS REPORT, AND THIS REPORT AS WE PREVIOUSLY SAID DID
8 NOT INCLUDE THE 1984 NATURAL BUSINESS UNIT ADJUSTMENT.

9 Q. ECKMANN 7?

10 A. YEAH, WHICH IS THE SAME NUMBER AS 1984
11 AS FAR AS E.L.T.

12 Q. READ BACK MR. HEGER'S ANSWER.

13 (WHEREUPON, THE REPORTER THEN READ
14 THE RECORD.)

15 Q. IF YOU WOULD LOOK AT WHAT WE MARKED AS
16 HEGER 2, MR. HEGER, WHICH IS THE

17 A. YES.

18 Q. -- '84 CONSOLIDATED INCOME STATEMENT
19 AND PAGE 3.

20 A. YES.

21 Q. THERE IS A LINE ITEM FOR '84 MONTH
22 ENDED.

23 A. YES.

24 Q. OF 19 MILLION 2?

25 A. RIGHT.

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1 Q. THAT IS THE NBU FIGURE FOR '84; IS
2 THAT CORRECT?

3 A. THAT'S CORRECT, WHICH WAS NOT INCLUDED
4 IN THE DECEMBER, 1984 FINANCIAL REPORT.

5 Q. WHEN YOU LOOK AT BROWN & WILLIAMSON
6 ON THE CONSOLIDATED BASIS THAT'S IN THE FINANCIAL REPORT
7 WHICH INCLUDES E.L.T., DO YOU THEN, TO OBTAIN THE BOTTOM
8 LINE LIFO ADJUSTMENT NUMBER, ADD THE NBU THAT IS IN THE
9 CONSOLIDATED INCOME STATEMENT FOR '84 WITH THE E.L.T.
10 FIGURE FOR '84?

11 MR. KLOTZ: OBJECT TO THE FORM.

12 A. LIFO IS LIFO. IT DOESN'T MATTER IF
13 IT'S IN E.L.T.'S INVENTORY, IT'S ALL B&W'S INVENTORY SO
14 LIFO IS ONE CALCULATION. NO LIFO CALCULATION IS MADE
15 FOR E.L.T.

16 THERE IS ONE LIFO CALCULATION, BE IT
17 MULTIPLE POOL, THE OLD METHODOLOGY OR THE NEW
18 METHODOLOGY SO THERE IS NO CALCULATION FOR E.L.T.

19 WHAT I'M TRYING TO EXPLAIN TO YOU IS
20 THAT THE E.L.T. FOR MANAGEMENT REPORTING WAS ALLOCATED
21 PRIOR TO 1984 A LIFO EXPENSE.

22 Q. SO, IN EFFECT, FOR YEAR ENDED DECEMBER
23 '84 FOR BROWN & WILLIAMSON INCLUDING E.L.T., THE LIFO
24 ADJUSTMENT NUMBER IS \$19,200,000?

25 MR. KLOTZ: OBJECT TO THE FORM.

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1 A. THE PROJECTION THAT WAS MADE FOR THE
2 NATURAL BUSINESS UNIT AFTER THE MANAGEMENT REPORT WAS
3 MADE WAS \$19,200,000, WHICH WAS NOT THE FINAL NUMBER.

4 Q. AND THAT WAS THE ADDITIONAL AMOUNT
5 THAT WAS INVOLVED WAS THEN ENTERED IN THE BOOKS IN 1985?

6 A. YES.

7 Q. THAT WAS SOME ROUGHLY 8 MILLION
8 DOLLARS?

9 A. YES.

10 Q. ON PAGE 5 OF THE INCOME CONSOLIDATED
11 INCOME STATEMENT, HEGER EXHIBIT 3 --

12 MR. KLOTZ: THE '85 ONE?

13 Q. YES, HEGER 3.

14 A. PAGE --

15 MR. KLOTZ: 5.

16 Q. THERE IS A LINE ITEM FOR DAMAGED AND
17 OBSOLETE MATERIALS. IT'S ABOUT 3 OR 4 DOWN.

18 A. YES.

19 Q. THERE IS ALSO AN ACCOUNT AT BROWN &
20 WILLIAMSON FOR RETURNED GOODS; IS THAT CORRECT?

21 A. YES.

22 Q. HOW ARE THOSE 2 ACCOUNTS DIFFERENT?

23 A. WELL, RETURNED GOODS IS AN EXPENSE OF
24 PRODUCT THAT IS SOLD TO OUR CUSTOMERS AND THEN FOR
25 WHATEVER REASON IT IS RETURNED AND THE EXPENSE

1 ASSOCIATED WITH THOSE RETURNS ARE CHARGED TO THE ACCOUNT
2 RETURNED GOODS.

3 DAMAGED AND OBSOLETE MATERIALS IS
4 SOMETHING THAT FOR WHATEVER REASON HAS TO BE WRITTEN
5 OFF, BUT IT'S MATERIALS THAT HAVE NEVER BEEN SOLD BY THE
6 COMPANY.

7 Q. TURNING TO THE PAGE 6 THERE IS AN ITEM
8 THERE ENTITLED, "PRODUCTION REALIGNMENT EXPENSE" WITH AN
9 ACTUAL FIGURE OF 3,278,000. WHAT DOES THAT REFER TO?

10 A. THAT REFERS TO CLOSURES OF OLD PLANTS,
11 PLANT IN LOUISVILLE, KENTUCKY AND A PLANT IN PETERSBURG,
12 VIRGINIA, EXPENSES ASSOCIATED WITH THE PLANT AND
13 FACILITIES AND ALSO EXPENSES ASSOCIATED WITH PEOPLE.

14 LET ME STOP JUST A MOMENT. WHAT TIME
15 WOULD BE THE TIME THAT YOU'RE PLANNING TO BREAK FOR
16 LUNCH?

17 (DISCUSSION OFF THE RECORD.)

18 Q. LET'S MARK AS HEGER 4 A DOCUMENT
19 ENTITLED, "BROWN & WILLIAMSON TOBACCO CORPORATION
20 CONSOLIDATED TRIAL BALANCE DECEMBER 31, 1985," STAMP
21 NUMBER 183575 THROUGH 96.

22 (WHEREUPON, HEGER DEPOSITION EXHIBIT 4
23 WAS MARKED FOR IDENTIFICATION.)

24 Q. CAN YOU IDENTIFY WHAT'S BEEN MARKED
25 AS HEGER 4?

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1 A. IT'S THE BROWN & WILLIAMSON TOBACCO
2 CORPORATION CONSOLIDATED TRIAL BALANCE.

3 Q. SUBSEQUENT TO RUNNING THIS ARE THERE
4 ANY YEAR END ADJUSTMENTS MADE?

5 A. I'VE NEVER SEEN THIS REPORT.

6 Q. LET'S MARK AS HEGER 5 A DOCUMENT
7 ENTITLED, "BROWN AND WILLIAMSON TOBACCO CORPORATION
8 CONSOLIDATED SUBSIDIARY CONSOLIDATED TRIAL BALANCE
9 12-31-'84."

10 (WHEREUPON, HEGER DEPOSITION EXHIBIT 5
11 WAS MARKED FOR IDENTIFICATION.)

12 Q. WOULD YOU TURN TO PAGE 17 OF THE
13 EXHIBIT, MR. HEGER?

14 A. OKAY.

15 Q. TO THE LINE ITEMS GROSS PAID SALES
16 DOMESTIC THERE ARE 2 COLUMNS OF NUMBERS. DO YOU KNOW
17 WHAT THE LEFT-HAND COLUMN REPRESENTS, FIRST NUMBER,
18 WHICH IS 67,987,320?

19 MR. KLOTZ: HAVE YOU EVER SEEN THIS
20 DOCUMENT BEFORE?

21 THE WITNESS: NO.

22 MR. KLOTZ: EXHIBIT 5?

23 THE WITNESS: NO.

24 MR. KLOTZ: OKAY. HE CAN COMPARE
25 NUMBERS BETWEEN DOCUMENTS AS WELL IN THIS CASE AS

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1 ANYBODY. IF YOU ARE FAMILIAR WITH THIS AND KNOW HOW
2 IT'S PREPARED, THEN TELL HIM.

3 A. I'M FAMILIAR WITH THE REPORT, BUT I
4 NEVER LOOKED AT IT.

5 MR. KLOTZ: OKAY.

6 Q. YOUR TURN WILL COME, MARTY. YOU GOT
7 CROSS WHEN YOU WANT IT.

8 MR. HEGER?

9 A. THAT COLUMN REPRESENTS SALES.

10 Q. QUANTITIES?

11 A. QUANTITIES.

12 Q. WHEN YOU LOOK AT THE ITEMS IN THAT
13 COLUMN OPPOSITE SMOKING TOBACCO SPECIALTIES, CHEWING
14 TOBACCO, SNUFF AND FANCY GOODS, IS THAT CIGARETTE
15 EQUIVALENTS FOR THOSE ITEMS?

16 A. NO.

17 Q. DO YOU KNOW WHAT THEY REPRESENT?

18 A. YES.

19 Q. WHAT DO THEY REPRESENT?

20 A. SALES QUANTITIES.

21 Q. OH, IN POUNDS?

22 A. YES.

23 Q. LET'S MARK AS HEGER 6 FOR

24 IDENTIFICATION A DOCUMENT FROM T.W. WILSON TO MR. DU

25 PLANTIER DATED OCTOBER 4, 1986 WITH CC'S TO MR. HEGER

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1 AND OTHERS.

2 I BELIEVE THAT THE DATE IS IN THERE,
3 AND I PROBABLY SHOULD SAY '85 BUT I'LL LEAVE THAT TO MR.
4 HEGER.

5 MR. KLOTZ: DO YOU HAVE PRODUCTION
6 NUMBERS?

7 MR. TOPMAN: YES. SORRY. S-021325
8 THROUGH 44.

9 (WHEREUPON, HEGER DEPOSITION EXHIBIT 6
10 WAS MARKED FOR IDENTIFICATION.)

11 Q. HAVE YOU REVIEWED THE DOCUMENT?

12 A. NOT THOROUGHLY.

13 Q. OKAY.

14 MR. KLOTZ: DO YOU WANT HIM TO?

15 Q. FOR NOW LET ME JUST DIRECT YOUR
16 ATTENTION TO SCHEDULE 2-A IN THE DOCUMENT.

17 A. YES.

18 Q. DOES THIS SCHEDULE BREAK OUT
19 EXPORT-IMPORT AND CONTRACT SALES UNDER THE INTERNATIONAL
20 THE CATEGORY?

21 A. YES.

22 Q. HOW DOES IT DO THAT, SIR?

23 A. THE SCHEDULE STARTS WITH THE
24 INTERNATIONAL SALES VOLUME AND SIMPLY BACKS OUT THE
25 CONTRACT MANUFACTURE ABROAD AND THAT IS THE CONTRACT

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1 MANUFACTURE ABROAD. THERE IS OTHER PURPOSES TO THE
2 SCHEDULE, BUT IT SUBTRACTS OUT THE CONTRACT
3 MANUFACTURER.

4 Q. SO, FOR EXAMPLE, BY LOOKING AT THE
5 DECEMBER REPORT FOR A MOMENT, DECEMBER '85 FINANCIAL
6 REPORT, AND SPECIFICALLY THE PAGE ENTITLED INTERNATIONAL
7 SALES QUANTITY STAMP NUMBER SL -- S-1100.

8 A. YES.

9 Q. THE TOTAL SALES VOLUME FOR 1984
10 REFLECTED THERE IS 10,994, ROUGHLY ROUNDED TO 11?

11 A. FOR 1984, YES.

12 Q. WHICH TIES TO THE NUMBER ON SCHEDULE
13 2-A OF HEGER 6?

14 A. YES.

15 Q. SO THAT TO IDENTIFY HOW MUCH OF THAT
16 IS EXPORT QUANTITIES, ONE WOULD SUBTRACT THE 30,000
17 FIGURE FOR IMPORTS AND THE 1.4 FIGURE THAT APPEARS ON
18 SCHEDULE 2-A?

19 A. YES.

20 Q. AND THAT WOULD GIVE YOU THE EXPORT
21 FIGURE?

22 A. THAT'S CORRECT.

23 Q. ALL RIGHT. NOW, LET ME ASK YOU TO
24 REVIEW WHAT'S BEEN MARKED AS HEGER 6 AND TELL ME WHETHER
25 YOU CAN IDENTIFY THE DOCUMENT, EITHER ALL OR PARTS OF

1 IT.

2 A. YES, I CAN IDENTIFY THE DOCUMENT.

3 Q. DO YOU WANT TO LOOK AT THE LAST 2
4 PAGES BECAUSE I'M NOT CLEAR THAT, IN FACT, THEY ARE PART
5 OF YOUR MEMO THERE ALTHOUGH I THINK THIS IS THE WAY WE
6 HAVE IT IN OUR FILES.

7 A. I WOULD THINK THE LAST 2 PAGES WERE
8 NOT PART OF THIS DOCUMENT.

9 Q. OKAY. SO PUTTING ASIDE THE LAST 2
10 PAGES YOU CAN IDENTIFY THE BALANCE OF THE DOCUMENT?

11 A. YES.

12 Q. THIS IS A MEMORANDUM THAT YOU
13 RECEIVED FROM MR. WILSON?

14 A. YES.

15 Q. AND THE ATTACHMENTS CAME WITH IT?

16 A. YES.

17 Q. OKAY. AND MR. WILSON WORKS IN YOUR
18 DEPARTMENT?

19 A. YES.

20 Q. DO YOU RECALL WHETHER THE 1985
21 CONTRACT MANUFACTURING WAS ROUGHLY THE SAME AS IT WAS
22 FOR 1984?

23 MR. KLOTZ: OBJECT TO THE FORM.

24 A. I DON'T RECALL.

25 Q. THE LAST 2 PAGES OF THE DOCUMENT THAT
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1 SHOW CC TO THE COST STAFF, CAN YOU IDENTIFY THOSE?

2 A. NO.

3 Q. OKAY. YOU'VE NEVER SEEN THEM BEFORE?

4 A. NOT THAT I CAN RECALL.

5 Q. OKAY. DO YOU RECOGNIZE THE

6 HANDWRITING IN THE LOWER LEFT-HAND CORNER BY ANY CHANCE?

7 A. NO, I DO NOT.

8 Q. DO YOU RECOGNIZE THE STAMPS?

9 A. YES.

10 Q. WHOSE ARE THEY?

11 A. F.R.F. IS FRANK FAIN AND G.L.W. IS

12 GWEN WILLINGHAM.

13 Q. AND THE SECOND PAGE SEEMS TO HAVE THE
14 G.L.W. ALSO, THAT'S MISS WILLINGHAM AGAIN?

15 A. YES.

16 Q. WE'RE FINISHED WITH THAT ONE FOR NOW
17 I THINK.

18 A. OKAY.

19 Q. LET'S MARK AS HEGER EXHIBIT 7 FOR

20 IDENTIFICATION A DOCUMENT DATED JANUARY 26, 1984

21 ENTITLED, "PETERSBURG RATIONALIZATION," STAMP NUMBERS

22 078394.

23 (WHEREUPON, HEGER DEPOSITION EXHIBIT 7
24 WAS MARKED FOR IDENTIFICATION.)

25 A. OKAY.

55

1 Q. DID YOU WRITE WHAT IS IDENTIFIED AS
2 HEGER 7 FOR IDENTIFICATION?

3 A. I APPARENTLY DID.

4 Q. THE ECONOMIC ANALYSIS THAT IS
5 REFERRED TO IN THE FIRST PARAGRAPH AS HAVING BEEN
6 PREPARED IN NOVEMBER OF 1983, WHO WAS IN CHARGE OF
7 PREPARING THAT REPORT?

8 A. ARE YOU ASKING WHO WERE THE ANALYSTS
9 THAT PREPARED THE REPORT?

10 Q. YES.

11 A. I'M NOT CERTAIN BUT I THINK IT WAS AL
12 DIEBOLD.

13 Q. THE PETERSBURG FACILITY AT THE TIME IT
14 WAS CLOSED WAS ANNOUNCED TO THE PUBLIC?

15 MR. KLOTZ: OBJECT TO THE FORM.

16 MR. TOPMAN: I'LL REWORD IT.

17 Q. IN 1983 BROWN & WILLIAMSON MADE AN
18 ANNOUNCEMENT IT INTENDED TO CLOSE THE PETERSBURG
19 FACILITY OR PLANT; CORRECT?

20 A. I DON'T RECALL THE DATE.

21 Q. OKAY. AND THE REASON THEY ANNOUNCED
22 THEY WERE GOING TO DO THAT WAS BECAUSE THE PETERSBURG
23 PLANT WAS AN OLD ONE AND INEFFICIENT; CORRECT?

24 MR. KLOTZ: OBJECT TO THE FORM.

25 A. NO, IT WAS NOT THE REASON.

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1 Q. DO YOU RECALL WHAT THE ANALYSIS SHOWED
2 AS THE COSTS THAT WOULD BE INCURRED FOR CLOSING THE
3 PETERSBURG FACILITY?

4 A. I DON'T RECALL THE NUMBER.

5 Q. WAS THE PETERSBURG PLANT AS EFFICIENT
6 AS THE MACON PLANT?

7 A. NO.

8 Q. WAS IT A SIGNIFICANTLY OLDER PLANT
9 THAN MACON?

10 A. YES.

11 Q. I SHOW YOU WHAT HAS BEEN PREVIOUSLY
12 MARKED AS DIEBOLD EXHIBIT 13, MR. HEGER.

13 A. OKAY. DID YOU WANT ME TO THOROUGHLY
14 REVIEW THE DOCUMENT?

15 Q. I THINK YOU OUGHT TO READ IT.

16 A. SORRY.

17 Q. I THINK YOU SHOULD READ IT, YEAH.

18 A. OKAY.

19 Q. DID YOU RECEIVE A COPY OF DIEBOLD
20 EXHIBIT 13 FROM MR. DIEBOLD?

21 A. I'M SURE I DID.

22 Q. AND DID YOU HAVE ANY DISCUSSIONS WITH
23 MR. DIEBOLD ABOUT THE DOCUMENT?

24 A. I DON'T RECALL.

25 Q. DO YOU RECALL WHETHER YOU DISAGREED

1 WITH ANYTHING THAT WAS SAID IN THE MEMORANDUM?

2 A. APPARENTLY THIS WAS A VERY BROAD
3 ANALYSIS THAT WAS MADE IN DECEMBER OF 1983. AND I DON'T
4 RECALL HAVING ANY DISAGREEMENT WITH IT.

5 Q. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY
6 MARKED AS DIEBOLD EXHIBIT 12 FOR IDENTIFICATION.

7 A. OKAY.

8 Q. YOU'VE REVIEWED DIEBOLD EXHIBIT 12?

9 A. YES.

10 Q. DID YOU WRITE IT?

11 A. NO.

12 Q. DO YOU KNOW WHO DID WRITE IT?

13 A. NO.

14 Q. DID YOU RECEIVE A COPY?

15 A. YES.

16 Q. HOW CAN YOU TELL THAT?

17 A. BECAUSE MY WRITING IS AT THE BOTTOM.

18 Q. COULD YOU READ YOUR HANDWRITING, SIR,
19 WHAT YOU WROTE IN YOUR OWN HANDWRITING ON EXHIBIT 12?

20 A. WELL, IT'S AN ABBREVIATION FOR
21 MANUFACTURE - DOMESTIC 5-YEAR PLAN. UNDERNEATH OF THAT
22 IT SAYS "EXPORT." UNDERNEATH OF THAT IT SAYS, "LIMIT
23 SPENDING - ALL MAKING EQUIPMENT USED BEFORE TRANSFERRING
24 FROM PETERSBURG." UNDER THAT, IT SAYS, "WAS GOING TO
25 USE 8 MAKERS NOW 18." AND THEN UNDER THAT THERE IS A

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1 COLUMN OF FIGURES WHICH NET OUT TO 1.5 - APPROXIMATELY 2
2 MILLION DOLLARS.

3 Q. ARE THESE YOUR COMMENTS ON DIEBOLD
4 EXHIBIT 12?

5 MR. KLOTZ: I'M SORRY, OBJECT TO THE
6 FORM.

7 A. I REALLY DON'T SEE WHERE THOSE
8 COMMENTS ARE RELATIVE TO WHAT'S BEEN WRITTEN IN THIS
9 DOCUMENT.

10 Q. TAKE A LOOK UNDER MANUFACTURE IN YOUR
11 HANDWRITING WHERE YOU SAID, "ALL MAKING EQUIPMENT WOULD
12 BE USED BEFORE TRANSFERRING FROM PETERSBURG." AND IF
13 YOU LOOK AT THE SECOND PAGE OF THE EXHIBIT UNDER
14 ANALYSIS OF MACON EXCESS CAPACITY PARAGRAPH 3 SAYS --
15 I'M SORRY PARAGRAPH -- YES, 3.

16 A. NUMBER 3?

17 Q. YES, SIR.

18 A. YES.

19 Q. OKAY. DOES YOUR COMMENT IN THAT
20 PARAGRAPH 3 FIT IN TERMS OF THE SUBJECT MATTER?

21 MR. KLOTZ: OBJECT TO THE FORM OF THE
22 QUESTION.

23 A. I HAVE NO IDEA.

24 Q. IN PARAGRAPH ONE OF THE DOCUMENT UNDER
25 STRATEGY FOR GENERIC PRODUCTS IT SAYS, "IN 1984, MACON

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1 CAPACITY IS ESSENTIALLY ALLOCATED TO DOMESTIC
2 PRODUCTION, NO SIGNIFICANT EXCESS CAPACITY IS
3 AVAILABLE."

4 Q. A. YES.

5 Q. DO YOU RECALL DISCUSSING THAT TOPIC
6 WITH ANYONE AT BROWN & WILLIAMSON IN THE LATTER PART OF
7 1983 OR THE FIRST 3 MONTHS OF '84?

8 A. I'M SURE IT WAS DISCUSSED, BUT I DON'T
9 RECALL.

10 Q. LOOK AT PARAGRAPH 2 OF THE DIEBOLD
11 EXHIBIT 12.

12 IN THE SAME TIME FRAME DO YOU RECALL
13 HAVING DISCUSSIONS ABOUT THAT WITH ANYONE AT BROWN &
14 WILLIAMSON?

15 A. NOT THIS SPECIFIC COMMENT BUT THE
16 SUBJECT WAS CERTAINLY DISCUSSED.

17 Q. THE LAST SENTENCE OF PAGE ONE SAYS,
18 "ON THIS BASIS GENERIC PRODUCTION DOES NOT APPEAR TO BE
19 A REASONABLE PROJECT FOR CONSIDERATION UNLESS THE NEW
20 PRODUCT PLANS ARE SIGNIFICANTLY REDUCED."

21 DO YOU SEE THAT, MR. HEGER?

22 A. YES.

23 Q. DO YOU RECALL HAVING DISCUSSIONS WITH
24 ANYONE AT BROWN & WILLIAMSON IN THE LATTER PART OF 1983
25 OR THE FIRST 6 MONTHS OF 1984 RESPECTING THAT SUBJECT

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m1 MATTER?

2 MR. KLOTZ: OBJECT TO THE FORM.

3 A. NO, I DO NOT.

4 Q. DID BROWN & WILLIAMSON HAVE PROJECTED
5 IN ITS 5-YEAR PLAN FOR 1984 NEW PRODUCT INTRODUCTIONS?

6 A. YES.

7 Q. DID BROWN & WILLIAMSON IN FACT
8 INTRODUCE THOSE NEW PRODUCTS IN 1984?

9 MR. KLOTZ: OBJECT TO THE FORM.

10 A. WE INTRODUCED A NEW PRODUCT, BUT I'M
11 STRUGGLING OVER THE DATE. THE ANSWER TO THE BEST OF MY
12 RECOLLECTION IS YES, WE DID INTRODUCE THE NEW PRODUCT IN
13 1984.

14 Q. WHAT WAS THE NAME OF THAT NEW PRODUCT?

15 A. RICHLAND.

16 Q. RICHLAND IS A CIGARETTE THAT HAS 25
17 CIGARETTES IN A PACK?

18 A. THAT'S CORRECT.

19 Q. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY
20 MARKED AS HEGER 1, THE DECEMBER '85 FINANCIAL REPORT. I
21 DIRECT YOUR ATTENTION TO DOMESTIC SALES QUANTITIES STAMP
22 NUMBER S-1089.

23 A. YES.

24 Q. AND THAT SHOWS FOR THE YEAR 1984 SALES
25 OF RICHLAND CIGARETTES AND OUT OF THE TOTAL DOMESTIC

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1 SALES OF 67,987,000 FOR BROWN & WILLIAMSON. RICHLAND
2 REPRESENTED 523,000 STICKS?

3 A. THAT'S CORRECT.

4 Q. THAT'S LESS THAN A QUARTER PERCENT OF
5 BROWN & WILLIAMSON'S DOMESTIC PRODUCTION?

6 MR. KLOTZ: I BET YOU COULD DO THE
7 ARITHMETIC AS EASY AS ANYBODY.

8 A. DO YOU HAVE A CALCULATOR?

9 MR. KLOTZ: IT IS WHATEVER IT IS,
10 BRUCE. YOU DON'T NEED THIS WITNESS TO TESTIFY TO THAT.

11 A. IT'S ALMOST 8/10THS OF ONE PERCENT.

12 Q. I STAND CORRECTED, MR. HEGER.

13 LET'S MARK AS HEGER EXHIBIT 8 FOR
14 IDENTIFICATION A MEMORANDUM FROM MR. HEGER TO MR.
15 KOHNHORST. IT'S COPIES TO MR. HUGHES, ALAR AND SANDEFUR
16 DATED DECEMBER 20, 1983. STAMP NUMBERS ARE 159788, 88-
17 89.

18 (WHEREUPON, HEGER DEPOSITION EXHIBIT 8
19 WAS MARKED FOR IDENTIFICATION.)

20 A. OKAY.

21 Q. ON PAGE 2 THERE ARE SOME INITIALS
22 C.J.H. AND A SIGNATURE.

23 A. YES.

24 Q. WITH A SLASH. DO YOU KNOW WHO WROTE
25 THAT SIGNATURE?

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1 A. YES.

2 Q. WHO DID?

3 A. MY SECRETARY.

4 Q. AND SHE WAS AUTHORIZED TO DO THAT ON
5 YOUR BEHALF?

6 A. APPARENTLY SHE WAS.

7 Q. AND YOU DRAFTED THIS MEMORANDUM?

8 A. YES.

9 Q. YOU IN DOING SO REDUCED THE EXPORT
10 PROJECTED BY ONE BILLION UNITS FOR EACH OF THE 4 YEARS
11 COVERED BY THE SCENARIOS.

12 ON WHAT BASIS DID YOU DO THAT, MR.
13 HEGER?

14 MR. KLOTZ: OBJECT TO THE FORM.

15 MR. TOPMAN: WHAT'S YOUR OBJECTION?

16 MR. KLOTZ: I'M NOT SURE YOU PROPERLY
17 CHARACTERIZED WHAT HE DID.

18 Q. OKAY.

19 A. I'M SURE THE REASON WAS THAT OUR
20 SALES OF EXPORT WERE NOT MEETING OUR EARLIER
21 EXPECTATIONS.

22 Q. AND DO YOU RECALL ANYTHING
23 SPECIFICALLY, MR. HEGER?

24 A. NOTHING SPECIFIC.

25 Q. IN THE GENERIC FIGURES YOU SHOW IN

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1 1984, 23.7 BILLION CIGARETTES IN SALES, AND INCREASING
2 THROUGH TO 1987 TO 17.8 BILLION SALES, AND THAT'S TRUE,
3 IS IT NOT, FOR BOTH YOUR OPTIMISTIC AND PESSIMISTIC
4 SCENARIOS OF SALES VOLUMES; CORRECT?

5 A. THAT'S WHAT IT SAYS.

6 Q. ON WHAT BASES DID YOU SELECT THOSE
7 NUMBERS?

8 A. WELL, 1984 THERE IS A FOOTNOTE WHICH
9 SAYS THAT IT WOULD BE THE SAME AS 8 MONTHS OF LIGGETT'S
10 1982 EXPERIENCE, 1985 AND BEYOND. I DON'T RECALL WHAT
11 WAS THE BASIS OF THOSE FIGURES.

12 Q. AT THE TIME DID YOU BELIEVE IT WAS A
13 REASONABLE BASIS ON WHICH TO BASE THIS MEMO?

14 A. AS FAR AS MANUFACTURING CAPACITY, YES,
15 FOR AN OPTIMISTIC AND A PESSIMISTIC TOTAL SCENARIO.

16 Q. DID YOU THINK IT WAS NOT REASONABLE ON
17 SOME OTHER BASIS?

18 A. WELL, WE CERTAINLY WANT TO BE ABLE TO
19 HAVE THE MANUFACTURING ABILITY TO PRODUCE THE SALES THAT
20 WE ARE ABLE TO SELL SO WE ALWAYS MAKE OUR CALCULATIONS
21 ON MORE THAN ONE SCENARIO.

22 Q. I UNDERSTAND.

23 A. SO IT WAS A HIGH AND A LOW SCENARIO.

24 Q. BUT THE HIGH AND THE LOW SCENARIO
25 YOU'VE USED IN YOUR DECEMBER MEMO ARE AS TO GENERIC

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1 PROJECTED SALES THE SAME; IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND THAT WAS YOUR BEST ESTIMATE OF
4 WHAT YOU EXPECTED BROWN & WILLIAMSON'S GENERIC SALES TO
5 BE?

6 MR. KLOTZ: OBJECT TO THE FORM.

7 Q. IN THOSE YEARS?

8 A. IT'S HARD TO SAY BECAUSE THIS WAS WAY
9 BEFORE ANY DECISION WAS MADE TO GET INTO THE GENERIC
10 BUSINESS. THIS WAS DEALING WITH CLOSING OUR PETERSBURG
11 PLANT AND MOVING TO MACON AND TRYING TO DECIDE WHAT TYPE
12 OF MANUFACTURING CAPABILITIES WE THOUGHT WE MAY REQUIRE.

13 Q. FOR GENERICS?

14 A. FOR EVERYTHING.

15 Q. RIGHT. INCLUDING GENERICS THOUGH?

16 A. INCLUDING GENERICS.

17 Q. DID YOU SUBSEQUENTLY UNDERTAKE AT
18 BROWN & WILLIAMSON STUDIES TO DETERMINE WHAT SHOULD BE
19 SPENT IN CONNECTION WITH MOVING INTERNATIONAL TO MACON
20 AND PRODUCING GENERICS?

21 A. YES. THAT WAS THE BASIS OF THIS MEMO.

22 Q. WERE THOSE STUDIES THAT WERE
23 SUBSEQUENTLY CONDUCTED BASED UPON THE VOLUME FIGURES
24 INCLUDING THOSE FOR GENERICS THAT ARE CONTAINED IN YOUR
25 DECEMBER 1983 MEMO?

1 A. I DON'T RECALL.

2 Q. LET'S MARK AS HEGER EXHIBIT 9 FOR
3 IDENTIFICATION A DOCUMENT ENTITLED, "RD&E PLANNING
4 REPORT, IMPLEMENTATION COST OF EQUIPPING MACON TO
5 PRODUCE ALL DOMESTIC AND EXPORT PRODUCTS, JANUARY
6 1984." DISTRIBUTION INCLUDES MR. HEGER.

7 ONE OTHER THING, MR. HEGER. THERE IS
8 A DOCUMENT ATTACHED TO THIS WHICH IS CONSECUTIVELY
9 NUMBERED WITH THIS, BUT MAY NOT BE PART OF IT SO --
10 STAMP NUMBERS ARE 159678 THROUGH 709.

11 (WHEREUPON, HEGER DEPOSITION EXHIBIT
12 9 WAS MARKED FOR IDENTIFICATION.)

13 A. DID YOU WANT ME TO REVIEW THIS WHOLE
14 DOCUMENT?

15 Q. FIRST LET ME ASK YOU TO LOOK THROUGH
16 IT SUFFICIENTLY SO YOU CAN BE COMFORTABLE IN
17 IDENTIFYING IT ONE WAY OR ANOTHER.

18 A. I CAN IDENTIFY IT.

19 Q. WHAT IS IT?

20 A. THIS IS THE RECOMMENDATION THAT WAS
21 MADE FOLLOWING THE PREPARATION OF THIS MEMO, THE
22 RESEARCH DEVELOPMENT AND ENGINEERING REPORT TO PHASE OUT
23 THE PETERSBURG BRANCH AND MOVE ALL OF BROWN &
24 WILLIAMSON'S CIGARETTE MANUFACTURE IN THE UNITED STATES
25 TO MACON, GEORGIA. THIS WAS THE RECOMMENDATION.

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1 Q. AND YOUR REFERENCE TO THIS MEMO IN
2 YOUR ANSWER WAS TO THE HEGER EXHIBIT 8 WHICH IS YOUR
3 DECEMBER 20, 1983 MEMO?

4 A. I NOTE THAT THE SALES THAT IS IN THE
5 RECOMMENDATION ARE THE SAME AS THE SALES IN THAT MEMO.

6 Q. HEGER EXHIBIT 8?

7 A. HEGER EXHIBIT 8.

8 Q. DO YOU RECALL ANY DIFFERENCES, IF
9 THERE WERE ANY, BETWEEN THIS RD&E PLANNING REPORT AND
10 THE ONE REFERRED TO IN HEGER EXHIBIT 7, THE NOVEMBER
11 1983 ECONOMIC ANALYSIS?

12 MR. KLOTZ: OBJECT TO THE FORM.

13 A. THIS IS A REPORT WE'VE REVIEWED?
14 (WHEREUPON THE DOCUMENT WAS THEN
15 HANDED TO THE WITNESS.)

16 THANK YOU.

17 Q. READ BACK, IF YOU WOULD, MY QUESTION.
18 (WHEREUPON, THE REPORTER THEN READ THE
19 RECORD.)

20 A. I'M VERY SORRY, WOULD YOU READ IT
21 AGAIN?

22 Q. READ A LITTLE SLOWER.
23 (WHEREUPON, THE REPORTER THEN READ
24 THE RECORD.)

25 A. THEY WERE 2 DIFFERENT ANALYSES, AND
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1 I'M SURE SOME ASSUMPTIONS WERE DIFFERENT BUT BOTH
2 ANALYSES DEALT WITH THE SAME SUBJECT MATTER.

3 Q. MEANING MOVING PETERSBURG PRODUCTION
4 TO MACON?

5 A. YES.

6 Q. DO YOU RECALL WHETHER YOU MADE ANY
7 ANALYSIS OF WHAT PERCENTAGE OF SALES OF GENERIC
8 CIGARETTES YOU PROJECTED IN TOTAL FOR 1985?

9 A. AT WHAT PERIOD OF TIME ARE YOU ASKING
10 ME THAT QUESTION?

11 Q. THE TIME -- AROUND THE TIME YOU WROTE
12 YOUR DECEMBER 20, 1983 MEMO.

13 A. NO, I DON'T RECALL.

14 Q. LET'S MARK AS HEGER EXHIBIT 10 FOR
15 IDENTIFICATION A MEMORANDUM FROM MR. HEGER TO MESSRS.
16 KOHNHORST AND ROEDER WITH C.C.'S TO MR. DIEBOLD AND MR.
17 LOYD, STAMP NUMBERS 129783-85.

18 (WHEREUPON, HEGER DEPOSITION EXHIBIT
19 10 WAS MARKED FOR IDENTIFICATION.)

20 A. OKAY.

21 Q. CAN YOU IDENTIFY THE DOCUMENT?

22 A. I DON'T REMEMBER IT, BUT I CERTAINLY
23 RECEIVED IT.

24 Q. YOU RECEIVED IT FROM -- WHEN YOU SAY
25 RECEIVED IT --

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1 A. FROM AL DIEBOLD.

2 Q. LOOKING AT THE DOCUMENT WITH THE FIRST
3 PAGE, WHICH HAS SOME INITIALS ON IT C.J.H., THOSE ARE
4 YOUR INITIALS?

5 A. CORRECT.

6 Q. AND YOU WROTE THEM?

7 A. YES.

8 Q. AND YOU ATTACHED TO YOUR COVER
9 MEMORANDUM MR. DIEBOLD'S MEMORANDUM WHICH ARE THE NEXT 2
10 PAGES?

11 A. YOU'RE CORRECT.

12 Q. AND YOU SENT THAT ON TO MR. KOHNHORST
13 AND ROEDER AMONGST OTHERS?

14 A. YES.

15 Q. LOOKING AT THE SECOND PAGE OF THE
16 EXHIBIT, WHICH IS THE BEGINNING OF MR. DIEBOLD'S MEMO TO
17 YOU; CORRECT?

18 A. YES.

19 Q. DO YOU HAVE AN UNDERSTANDING OF THAT
20 MEMO?

21 A. VAGUELY. I BELIEVE THAT THIS MEMO
22 WRITTEN ON JANUARY THE 12TH WAS PART OF THE THOUGHT
23 PROCESS THAT WENT INTO MAKING THE RECOMMENDATION THAT WE
24 HAVE IN HEGER EXHIBIT 9. I BELIEVE THAT WAS PART OF THE
25 TIMING THAT THIS WAS -- THEY NEEDED SOME -- THE ANALYSTS

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1 NEEDED SOME HELP IN GUIDING THEM WITH SOME BROAD SCOPE
2 INFORMATION, AND I BELIEVE THAT WAS THE BASIS FOR THIS
3 AND, THEREFORE, I REVIEWED IT AND APPARENTLY SENT IT TO
4 MR. KOHNHORST AND ROEDER AND TOLD THEM I THOUGHT WE
5 SHOULD GO AHEAD ON THIS BASIS AND THAT WAS PART OF THE
6 EARLY THINKING THAT WENT INTO THIS REPORT.

7 Q. IN OTHER WORDS, AS YOUR MEMO SAYS YOU
8 WERE IN AGREEMENT WITH MR. DIEBOLD'S MEMORANDUM;
9 CORRECT?

10 A. FOR AN ANALYSIS, CORRECT.

11 Q. THE DIEBOLD MEMORANDUM, WHICH IS PART
12 OF THE HEGER 10, IN PARAGRAPH ONE REFERS TO M.P.E.
13 ASSIGNMENT OF COST. WHAT DOES THAT REFER TO?

14 MR. KLOTZ: THE SECOND PARAGRAPH?

15 A. M.P.E., I DON'T KNOW WHAT THAT REFERS
16 TO. I JUST DON'T KNOW. I'M NOT FAMILIAR WITH THAT
17 TERM.

18 (DISCUSSION OFF THE RECORD.)

19 Q. IN PARAGRAPH -- THE FIRST PARAGRAPH 2
20 HEADED "VOLUME," THAT IS EXPLAINING THAT THERE'S GOING
21 TO BE ADDITIONAL COST INVOLVED IN MOVING EXPORT
22 MANUFACTURE FROM PETERSBURG TO MACON?

23 A. THAT'S CORRECT.

24 Q. AND THE REASON IS BECAUSE GENERICS
25 WERE GOING TO BE, ACCORDING TO THIS MEMO, MANUFACTURED

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1 ON EXISTING MACON EQUIPMENT AND THAT WOULD NECESSITATE
2 BRINGING SOME OF THE PETERSBURG EQUIPMENT TO MACON AND
3 RETROFITTING IT SO IT COULD WORK IN MACON?

4 A. THAT'S WHAT THIS REFERS TO.

5 Q. AND THE PURPOSE OF THE MEMO IS TO TRY
6 AND DETERMINE A BASIS FOR ALLOCATING THE COST OF MOVING
7 -- OF CLOSING PETERSBURG AND MOVING PRODUCTION TO MACON
8 BETWEEN GENERICS, EXPORTS -- AND EXPORT CIGARETTES?

9 A. AT THE TIME THIS WAS WRITTEN THAT
10 WOULD HAVE BEEN THE REASON FOR THE MEMO.

11 Q. AND THE MEMO PRESENTS 3 ALTERNATIVES;
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND IT CHOOSES, ACCORDING TO MR.
15 DIEBOLD'S MEMO, NUMBER 1?

16 A. IT CHOOSES --

17 Q. LOOK AT PAGE 2, MR. HEGER.

18 A. THAT'S CORRECT.

19 Q. AND YOU APPROVED THAT CHOICE BY WHEN
20 YOU SENT YOUR COVER MEMO UP TO MR. KOHNHORST; IS THAT
21 CORRECT?

22 A. YES, I DID.

23 Q. LET ME DIRECT YOUR ATTENTION TO PAGE
24 15 WHERE IT SAYS, "IT SHOULD BE NOTED HERE THAT BY
25 UTILIZING MAKING EQUIPMENT ON GENERICS WE HAVE INCREASED

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1 THE COST OF IMPLEMENTING EXPORT." DO YOU SEE THAT IN
2 HEGER EXHIBIT 9?

3 A. YES.

4 Q. THEN IT SHOWS A TOTAL EFFECT OR COST
5 UNDER THE OPTIMISTIC FORECAST OF 8.9 MILLION DOLLARS
6 APPROXIMATELY?

7 A. (NODDED HEAD AFFIRMATIVELY.)

8 Q. DOES THAT REFLECT FOLLOWING THE
9 APPROACH THAT YOU RECOMMENDED IN YOUR MEMO OF JANUARY
10 13, '84 FOR ALLOCATING THE COST BETWEEN GENERICS AND
11 EXPORT MANUFACTURE?

12 A. I DON'T REMEMBER, BUT I WOULD HAVE TO
13 ASSUME THAT IT DOES.

14 Q. AND PAGE 15 OF THE DOCUMENT HEGER
15 EXHIBIT 9, THE RD&E REPORT OF JANUARY '84 ALSO PROVIDES
16 THAT THERE WILL BE OTHER EXPENSE OF \$953,000 FOR A
17 MANUFACTURE OF GENERICS AT MACON?

18 A. WHAT PAGE DID YOU REFER TO?

19 Q. 15.

20 A. 15?

21 Q. YES, SIR.

22 A. THAT'S CORRECT. WHERE I'M HAVING
23 TROUBLE WITH IS THE SUMMARY BECAUSE THE SUMMARY
24 ALLOCATION ON PAGE 2 IS DIFFERENT.

25 Q. I'M NOT SURE I UNDERSTAND WHY YOU SAY

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1 THAT, SIR. I BELIEVE GENERIC PRODUCTS IN BOTH THE
2 SUMMARY -- IN BOTH FORMS OF THE SUMMARY SHOWS 9-5 3,
3 DOES IT NOT?

4 A. I WAS LOOKING AT THE \$8.9 MILLION.

5 Q. I SEE. NO, I WAS ASKING YOU ABOUT THE
6 953,000.

7 A. NO, I UNDERSTOOD THAT. OKAY. NOW, I
8 UNDERSTAND. THAT'S -- WE WERE PREVIOUSLY TALKING ABOUT
9 ADDED EXPORT COSTS, YES.

10 Q. BY THE WAY, ON THE SUMMARY ON PAGE 2
11 OF THE RD&E REPORT OF JANUARY 4, IS THAT YOUR
12 HANDWRITING?

13 A. THE PENCILLED-IN FIGURES?

14 Q. YES.

15 A. YES.

16 Q. AND IS THAT TRUE FOR THE NEXT PAGE AS
17 WELL?

18 A. YES.

19 Q. THE FIGURE UNDER EXPORT PRODUCTS IS --
20 I CAN'T QUITE MAKE IT OUT. CAN YOU -- IS IT ILLEGIBLE
21 TO YOU?

22 A. YES.

23 Q. WHAT IS THAT, SIR?

24 A. I THOUGHT IT WAS. I GUESS IT ISN'T.

25 OH, I SEE WHAT IT IS. 36,983.

1 Q. AND THE TOTAL FOR NEW DOMESTIC
2 PRODUCTS IS 1343?

3 A. RIGHT.

4 Q. AND THE GRAND TOTAL?

5 A. STARTING 9,280.

6 Q. THOSE REFLECT HANDWRITTEN CHANGES YOU
7 MADE ON THE NUMBERS?

8 A. RIGHT.

9 Q. AND YOU MADE SIMILAR CHANGES TO THE
10 PESSIMISTIC SALES SCENARIO COST SUMMARY ON THE NEXT
11 PAGE?

12 A. THAT'S CORRECT.

13 Q. OKAY. LUNCH?

14 A. WHENEVER IT'S A CONVENIENT TIME TO
15 BREAK.

16 * * * *

17 (WHEREUPON, A LUNCH BREAK WAS THEN
18 TAKEN.)

Q. After the issuance of the January 1984 RO&E planning report which was marked as negative, did you discuss that report with anybody at Brown & Williamson?

A. Certainly.

Q. Do you recall with whom?

A. Dr. Hughes, among others.

Q. And was it reviewed in detail?

A. Yes.

Q. And as a result of that detailed review, was a subsequent report prepared?

A. I recall that a capital proposal was put together.

MR. TOPPAN. Let me mark as negat Exhibit 11, for identification, a document, the first pages of which are a memorandum from Dr. Hughes to Mr. Frigon, dated February 21, 1984, and attached to that memorandum is an RO&E planning report entitled Implementation Cost of Equipping Bacon To Produce All Domestic And Export Products. Stamp numbers are 159647 through 48.

Let's mark them as separate exhibits then. The first one will be the memorandum by Dr. Hughes to Mr. Frigon, 159647 to 48. And then the RO&E report having previously been marked as negat.

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1 EXHIBIT 46, and that is stamp numbers 159652 through
2 74

3 (whereupon, exhibit 11 was marked for
4 identification.)

5 Q. Okay

6 Q. Would you also review, if you
7 would, what was previously marked as Bacon 46?

8 A. This is the same document we
9 reviewed this morning. Is it not?

10 A. No, it is not.

11 Q. It is not?

12 A. It is not. It's the same

13 document you reviewed -- the document you reviewed
14 this morning which was Neger 9, was dated January
15 '64. You can compare them and -- off the record.

16 Q. Oh-huh.

17 (A discussion was held off the
18 record.)

19 A. Okay.

20 Q. Have you reviewed Bacon Exhibit
21 46 and Neger exhibit 11?

22 A. I've read Neger Exhibit 11 and
23 I have scanned through Bacon 46

24 Q. Did you receive a copy of Neger
25 Exhibit 11 and memorandum of Dr. Hughes dated

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1 February 21 1964?

2 A. I don't know -- I don't recall
3 receiving a copy but I do recall seeing this
4 somewhere. I have seen this document.

5 Q. Okay The top right-hand corner
6 of that document is the name written Carl Heger.

7 A. Un-huh.

8 Q. Is that your handwriting?

9 A. No.

10 Q. And the last page of the
11 document --

12 A. Un-huh.

13 Q. -- there is a signature.

14 A. Un-huh.

15 Q. Can you identify whose signature
16 it is?

17 A. Yes.

18 Q. Whose is it?

19 A. That's John McDonough's
20 signature.

21 Q. And he signed for Dr. Hughes?

22 A. Yes.

23 Q. The memorandum of Dr. Hughes in
24 the last line refers to a detailed outline of the
25 specifics of the study.

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1 A. Oh-huh.
2 Q Is Bacon 45 the RD&E report.
3 what was attached to -- what was being referred to as
4 being attached to Dr. Hughes' memo?

5 MR. KLOTZ. Object to the form.
6 S A. Was this analysis attached to
7 this memo?

8 Q Yes.
9 A. Well, then apparently it was.
10 Q I'm sorry.

11 MR. TOPMAN: Read back Mr.
12 Heger's answer.

13 (The court reporter read the
14 record.)

15 (A discussion was held off the
16 record.)

17 (A short recess was taken.)

18 Q Let me ask you the question to
19 clarify. Heger 3 is marked separately from Bacon 45.

20 A. Right.

21 MR. KLOTZ: Heger 3?

22 MR. TOPMAN: I'm sorry & Heger
23 11.

24 A. Heger 11 right.

25 Q My apologies.

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1 A. Right.
2 Q. Now my question is simply this.
3 The last line of Heger Exhibit 11 says attached is a
4 detailed outline of the specifics of the study.

5 A. Un-hun.

6 Q. My question is: Is that a
7 reference to the separate exhibit, Bacon Exhibit 46?

8 A. I have to assume so, but I'm not
9 certain. I mean, we have a number of studies here,
10 but I have to assume this is the study that
11 accompanied this memo.

12 Q. Now, if you would turn to Page
13 2, Number 2, or Bacon 46 --

14 A. Yes.

15 Q. -- there are figures under the
16 cost summary columns for the project. And if you
17 would be good enough to look at the January 1984,
18 which has been marked previously as Heger 9, where it
19 too has a cost summary --

20 A. Un-hun.

21 Q. -- do the handwritten numbers
22 that you put on the January '84 RDA report --

23 MR. KLOTZ: You are seriously
24 going to go and ask this question?

25 Q. -- in the total column become

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B21 26460

1 incorporated into the total column of the cost summary
2 on page 43?

3 MR. KLOTZ: Object to the term.
4 If you are asking whether the numbers that he
5 previously read into the record are the same numbers
6 that appear here, anybody can see that.

7 MR. TOPMAN: Okay.

8 MR. KLOTZ: It's stipulated that
9 they are.

10 MR. TOPMAN: Fine.

11 MR. KLOTZ: If you are asking
12 something other than that, then I don't know what you
13 are asking.

14 MR. TOPMAN: No, that's what I
15 was asking.

16 MR. KLOTZ: You wanted to know
17 whether 37,806 is the same as --

18 MR. TOPMAN: Was the same number
19 that he had written down there in his own handwriting.

20 MR. KLOTZ: He told you before
21 it was 37,806.

22 The answer is yes. I take it.
23 Mr. Hager?

24 They are actually different.

25 Thank you, sir.

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20

1 A. But some are the same and some
2 Q. aren't, so there were some other changes made from here
3 to here.

4 Q. Right. Now the grand total of
5 the project is the same as you changed on the January
6 report; is that right?

7 A. 39280 is 39280.

8 Q. Do you recall having discussions
9 with anyone at Brown & Williamson about the changing
10 of the cost summary figures from the ones that appear
11 in the January report and the ones that you've
12 identified as being related to Dr. Hughes' memo of
13 February 21?

14 A. No, I do not recall.

15 Q. Do you remember why those
16 changes were made?

17 A. No, I do not.

18 Q. There is a handwritten note on
19 the Bacon 46 exhibit on Page 2 showing a subtraction
20 of \$521,000. Do you know what that refers to?

21 A. The 39280 is the total, and the
22 521 is the same under domestic new products. Why that
23 was put there, I have no idea.

24 Q. Is that your handwriting?

25 A. Actually, the 39280 looks like

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1 my handwriting. The 521. I'm not sure. It probably
2 is. But I'm not sure.

3 Q. The net total of 39280 minus the
4 521 would give a cost for the project eliminating the
5 new domestic product costs; is that right? Would be
6 the effect of it?

7 A. I believe that would be the
8 effect of it.

9 Q. The sales volumes used for both
10 the optimistic and downside contingency scenarios on
11 which this report, Bacon 46, is based remain unchanged
12 from the January '84 report; is that right? You
13 compare it, Mr. Heger. I believe that's right, Mr.
14 Heger. The stamp number, if that will be helpful, is
15 159765. Which one are you looking at, sir? This one.

16 MR. KLOTZ. Your question is
17 whether the numbers that appear in the grand total
18 column are the same on those two documents?

19 MR. TOPHAN: I'm sorry?

20 MR. KLOTZ. Your question is
21 whether the numbers that appear --

22 MR. TOPHAN: No, whether the
23 downside scenario volume figures and what is labeled
24 the five-year plan sales scenario are the same numbers --

25 MR. KLOTZ. Are you unable to

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1 determine that yourself?

2 MR. TOPMAN: -- as appear in the
3 prior January '64 report.

4 Q. They appear identical.

5 Q. If you would turn to -- just
6 bear with me -- stamp number 159666 in Bacon 46 the
7 subsequent ROSE report. Do you have that, Mr. Bacon?

8 A. 159666?

9 Q. Right.

10 A. Heger.

11 Q. Heger, I apologize. The cost --
12 grand total cost for generics for equipment, et cetera
13 is \$953,000 in this report just like it was in the
14 prior report, correct?

15 MS. KULTON: Do you want to give
16 us the page number in the prior report, and we'll tell
17 you whether 953 is the same as 953.

18 MR. TOPMAN: I believe it was on
19 Page 15.

20 MR. KLOTZ: Page 15?

21 MR. TOPMAN: Un-hun.

22 MR. KLOTZ: I'll stipulate
23 without the witness saying that 953 is 953.

24 Q. Mr. Heger, the figure has not
25 changed?

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1 A. The same. 953 is 953.

2 Q. In the Bacon 46 R&E report it
3 states that. "It should be noted here that by
4 utilizing Bacon equipment on generics, we have
5 increased the cost of implementing export." And it
6 shows a total effect for the five-year plan sales
7 forecast of \$6,217,000.

8 A. Yes.

9 Q. In the prior January report the
10 figure was \$8,896,000.

11 A. Un-huh.

12 Q. Do you know why the cost of
13 implementing export attributable to generics decreased
14 by the amount?

15 A. No.

16 Q. In Dr. Hughes' memo, near
17 Exhibit 11 --

18 A. Un-huh.

19 Q. -- the first sentence says that.
20 "In October, when the Petersburg rationalization study
21 was prepared, it was determined that capital costs of
22 some \$43 435,000 were required to enable Bacon to
23 accommodate export manufacture as well as the
24 remaining domestic brands manufactured at Petersburg
25 in a manner which was consistent with the design

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1 possibilities of Macon."

2 Q Do you recall whether you
3 received such an October Petersburg rationalization
4 study?

5 A Yes.

6 Q Do you recall what its
7 recommendations were?

8 A The recommendation was to phase
9 out and close the Petersburg facility and move all the
10 cigarette production to Macon, Georgia.

11 Q MR. TOPMAN: Marty, do you know
12 whether that's been produced to us, because I don't
13 believe I've seen -- ever seen a copy of it.

14 MR. KLOTZ: As I sit here, I do
15 not know.

16 MR. TOPMAN: I'd appreciate it
17 if you could check for us, and if it hasn't been
18 produced, please have a copy of it produced for us.

19 Jim was just pointing out to me
20 that we had written to you requesting documents which
21 would cover that.

22 MR. KLOTZ: Yeah. Let me point
23 out to you that for the last month every piece of
24 paper in our finance department has been available for
25 your inspection.

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1 MR. TOPPAN: Could you read back
2 what Mr. Klotz just said?

3 MR. KLOTZ: What I just said was
4 that for the last month every piece of paper in our
5 finance department has been available for your
6 inspection so that we can finally put an end to this
7 ceaseless demand for additional documents that you
8 seem to think are relevant. We've said we'd produce
9 absolutely everything that by any stretch of the
10 imagination bears on this case, but that if you want
11 to come and look at additional documents, tell us.

12 And Mr. Condren has taken us up
13 on that offer on at least one occasion.

14 MR. CONDREN: Let me just
15 respond to Mr. Klotz's statement. My understanding is
16 that what was made available for our inspection from
17 the finance department is documents related to branded
18 products cost data.

19 MR. KLOTZ: I think we can agree
20 that this is a document related to branded cost data.

21 MR. CONDREN: Relating
22 specifically to branded cost data.

23 MR. KLOTZ: Your understanding --

24 MR. CONDREN: Which this doesn't.

25 MR. KLOTZ: Sure, it does.

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824 20467

1 MR. CONDREN: Doesn't relate to
2 cost for specific brands.

3 MR. TOPMAN: It's not worth
4 taking up the time to debate whether or not the
5 document does or doesn't relate to branded cost. Okay?

6 MR. KLOTZ: Especially since the
7 answer is so obvious.

8 MR. CONDREN: Let me just make
9 another point. I believe you are referring to a visit
10 I made to Brown & Williamson --

11 MS. KLOTZ: Un-huh.

12 MR. CONDREN: -- with Walter
13 Kiemer.

14 MR. KLOTZ: Right. In response
15 on our request.

16 MR. CONDREN: Right. And during
17 that visit I made a specific request for that
18 document, and it has not yet been produced.

19 MR. TOPMAN: That takes care of
20 that issue.

21 MR. KLOTZ: Well, if you are
22 concerned about not having documents, the very reason
23 for our offer to you to come in was because despite
24 the production of hundreds or thousands of documents
25 of the most marginal possible relevance, you continue

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B21 20468

1 to seem to have an interest in yet additional
2 documents. And that's why we said, you want them, you
3 come and get them.

4 MR. CONDREN: The agreement I
5 made with Walter is that I would ask for specific
6 documents, and that he would make an effort to locate
7 those documents rather than turn --

8 MR. KLOTZ: Are you telling me
9 that he hasn't?

10 MR. CONDREN: Yes, I'm telling
11 you that he has not produced that document.

12 MR. KLOTZ: He has not made an
13 effort to locate that document?

14 MR. CONDREN: I don't know if
15 he's made an effort or not, but we don't have it.
16 among a number of other documents that I requested in
17 a July 29 letter to him and a July 30 letter to him.
18 And the understanding I worked out with him is that I
19 would make specific requests for documents, and he
20 would look for them, and he would have Brown &
21 Williamson personnel look for them.

22 MR. KLOTZ: Your request is
23 noted.

24 (A discussion was held off the
25 record.)

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B21 20469

cc

1 MR. CONDER: One more thing.
2 ✓ Walter never represented to me that all of the files
3 would be made available for my inspection if I wanted
4 to go through all of them.

5 MR. KLOTZ: I so represented to
6 Mr. Barker. I don't care what Mr. Kienan represented
7 to you.

8 MR. CONDER: I don't know what
9 you represented to Mr. Barker.

10 MR. KLOTZ: Fine. Then you are
11 not in a position to speak for him, are you?

12 MR. CONDER: No, but I'm in a
13 position to speak about what Mr. Kienan and I worked
14 out, specifically with respect to cost documents.

15 MR. TOPHAN: Let me just
16 understand now. What you are telling me now is you --

17 MR. KLOTZ: I'm telling you that
18 an offer was made to Webster and Sheffield. I told
19 Mr. Barker we have produced in hard copy absolutely
20 every document that in our judgment has any con-
21 ceivable bearing on issues in this case, namely the
22 cost of generic cigarettes. However, your side
23 continually claims to be interested in additional
24 documents. And your document requests are so broadly
25 worded, calling in literally for every document

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824 20470⁴

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1 relating to any cost element of any product
2 manufactured by Brown & Williamson, that technically
3 that embraces every document in the finance
4 department. And I know of no way of satisfying your
5 requests short of saying if you want to review the
6 files of the finance department, tell us, we will make
7 them available, file drawer by file drawer in
8 Louisville. And you can mark for copying anything you
9 want.

10 MR. TOPHAN: Well, the only
11 thing I can tell you is obviously you have an
12 advantage since Mr. Barker is not here, can't respond
13 to that. I can only tell you that I have not heard of
14 that kind of offer.

15 MR. KLOTZ: That's fine.

16 MR. TOPHAN: But I will be glad
17 to address it with Mr. Barker.

18 MR. CONDREN: Let me just note
19 that Mr. Rieman has never responded to my specific
20 request for documents in letters to him by saying you
21 can come and look at all the files if you want.

22 He responded by saying that he
23 and Brown & Williamson would make an effort to locate
24 those documents and would produce them upon locating
25 them.

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B24 20471

1 MR. KLOTZ: Frankly, I think you
2 have very little to complain about when your very
3 recent letters have not yet been fully responded to.
4 I mean, we get these letters from you every couple of
5 days for additional things that you want.

6 MR. CONNOR: I'm not
7 complaining, Marty. I'm just telling you that --

8 MR. KLOTZ: It sounds like
9 you're complaining. It sounds like you were
10 complaining before.

11 MR. TOPMAN: Well, I'm going to
12 tell you something. I really don't want to take up
13 time in this deposition.

14 MR. KLOTZ: I don't either. And
15 the reason I don't want to take up time on it is
16 because I made an error to Mr. Barker precisely to get
17 rid of these idiotic arguments once and for all.

18 MR. TOPMAN: It's really not
19 necessary to characterize and engage in the ad hominem
20 attacks. The Judge said we were entitled to
21 documents. The Judge --

22 MR. KLOTZ: And I said to Mr.
23 Barker, you want them, you get them.

24 MR. TOPMAN: Just let me finish.
25 Do you mind, Marty? Now, you may not agree with what

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1 the Judge said, okay?

2 MR. KLOTZ. This has nothing --
3 no. I object to that. This has nothing to do with
4 that. The Judge gave us an order to produce
5 documents. Literally construed, your document request
6 called for every document in our finance department,
7 and I made those documents available. I didn't have
8 the conversation with you, I had it with authorized
9 representatives of your client, and those documents
10 were made available by my order a month ago.

11 MR. TOPHAN: Can I just finish?

12 MR. KLOTZ: You can finish your
13 statement. It was more than a month ago.

14 MR. TOPHAN: The attempt to
15 characterize as idiotic and those other kind of words.
16 I don't think really advances the ball very much to
17 get this thing going, especially in light of -- what
18 you're telling me is the Judge told you to produce all
19 documents and we are still asking for idiotic things.

20 MR. KLOTZ. NO. You missed the
21 point, Mr. Tophan.

22 MR. TOPHAN: Well, can I --

23 MR. KLOTZ. NO. you can't. The
24 Judge told us to produce documents and we produced
25 them.

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824 20473

1 MR. TOPMAN: And that the judge
2 also told you to produce a certificate which we have
3 asked you for now for at least two times, and it seems
4 to me is right on your representation and all the
5 other statements you made today we haven't gotten
6 your statement yet.

7 MR. KLOTZ: You have not gotten
8 my statement yet. You will get it at an appropriate
9 time. My statement today has nothing to do with
10 complete production of every document you have
11 requested in any of your requests. What I am telling
12 you today is that every cost document that you have
13 requested has been offered to be produced to you more
14 than a month ago. That has nothing to do with any
15 certificate.

16 MR. TOPMAN: I think it's got a
17 lot to do with the certificate, frankly.

18 MR. KLOTZ: I think it has
19 absolutely nothing to do with the certificate.

20 MR. TOPMAN: Okay. Let me just
21 try and get on with the deposition.

22 MR. KLOTZ: Happily.

23 Q. The figures in Bacon exhibit 45
24 the second RUGS report, that appear on Page 159660
25 relating to generics --

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824 20474

1 Q. ON-again.
2 Q. -- the \$8,217,000, in
3 determining that amount, was the method that was set
4 out in your earlier memo, dated January 13, 1964,
5 negli exhibit 10, and which it was identified as the
6 preferred method paragraph 1 there, followed in
7 determining that \$8,217,000 figure?

8 A. MR. KLOTZ. Object to the form.

9 A. I don't recall.

10 Q. Do you recall any discussions
11 with Dr. Hughes or anyone else at Brown & Williamson
12 respecting the reduction to the \$39,260,000 figure
13 that is referred to in Dr. Hughes' February 24, 1964
14 memo?

15 A. I'm certain I had discussions
16 with Dr. Hughes and Mr. McDonough concerning that.

17 Q. Do you have any recollection of
18 their substance?

19 A. The question is from the
20 reduction of the 43.4 million --

21 Q. Yes, sir.

22 A. -- down to 39.3?

23 Q. Yes, sir.

24 A. The discussion was that the
25 original study was rejected.

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821 20475

1 Q. by whom, sir?
2 A. It was rejected by Dr. Hughes
3 and Mr. Filson.

4 Q. And the new study of 39 million
5 units, was that the subject of discussion between you
6 and Dr. Hughes?

7 A. Yes, it was.

8 Q. Do you recall any of that
9 discussion?

10 A. This is the proposal that was
11 ultimately accepted.

12 (A discussion was held off the
13 record.)

14 (A short recess was taken.)

15 Q. In 1983, Brown & Williamson used
16 a LIFO method of cost in its inventory?

17 A. Yes.

18 Q. And you mentioned before, I
19 think, that the method that was used in the LIFO was a
20 multiple pool method.

21 A. That's correct.

22 Q. At the end of the year, for
23 example, in 1983 did Brown & Williamson make an entry
24 into the LIFO reserve account?

25 A. Yes.

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1 Q. Why did Brown & Williamson use a
2 LIFO reserve account as opposed to charging directly
3 to inventory accounts?

4 A. I don't understand the question.

5 Q. Well, instead of creating a
6 reserve account, which at times it was LIFO against --

7 A. Un-huh.

8 Q. -- when they're using a reserve
9 account, when there is LIFO expense, there is a credit
10 to the reserve, correct?

11 A. Un-huh.

12 Q. Can you tell me why Brown &
13 Williamson used a reserve account instead of directly
14 creating its inventory accounts?

15 A. Brown & Williamson went on LIFO
16 in 1949, and that's the way the system is set up.

17 Q. And they just continued to
18 follow through when you were there?

19 A. That's correct.

20 Q. Are you familiar with the
21 concept under LIFO of dollar decrements?

22 A. No, I'm not.

23 Q. Are you familiar with a concept
24 or pound decrements?

25 A. Well, we experience a pound.

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824 20477

1 decrement and a dollar decrement.

2 Q. Could you --

3 A. So as far as the -- how it
4 affects Brown & Williamson, yes. I am familiar with
5 that.

6 Q. Could you explain those two
7 concepts, pound decrement and dollar decrement?

8 A. Well, you experience a decrement
9 in your inventory if we are talking about year
10 inventory when one year's poundage in inventory at
11 December 31st, at the end of the year, is less than
12 the prior year.

13 Q. Okay. And what factors would
14 cause that to happen?

15 A. The level of -- it's strictly
16 the level of inventory that you have at the end of the
17 year in your possession.

18 Q. And that's a function of --

19 A. Of buying and purchases and
20 usings.

21 Q. -- how much you purchase.

22 Now, you refer to a dollar
23 decrement. Could you explain that concept?

24 A. Well, there is dollars
25 associated with pounds, and each time you set up a

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1 LIFE layer. It's at a certain index, depending on what
2 the inflation of your purchases has been that year.
3 so when you reduce your poundage, you are reducing
4 that at the layers that were set up in prior years.

5 Q. The usings of pounds of tobacco
6 is a product of the current year's manufacturing
7 process, correct?

8 A. Incorrect. It's a matter of
9 what is sold that year.

10 Q. And the purchases in a given
11 year is what you bought?

12 A. That's correct.

13 Q. In determining how much tobacco
14 to buy in a given year, does Brown & Williamson base
15 that on a sales forecast for its cigarette products?

16 A. Among other things, yes.

17 Q. What are the other things in
18 addition to the sales forecast?

19 A. The quality of the crop, the
20 prices of the tobacco, the economics. That's
21 basically it.

22 Q. When you say economics, what are
23 you referring to there?

24 A. Well, as far as the price of the
25 tobacco and what you anticipate prices may -- are this

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1 year versus what they may be next year.

2 Q. And if you have a -- for Brown &
3 Williamson, if they had a poundage decrement, that
4 would effectively result in less LIFO expense?

5 A. Yes.

6 Q. And that would translate to more
7 profit for Brown & Williamson?

8 A. That's correct.

9 Q. In 1983, Brown & Williamson
10 experienced a poundage decrement; is that right?

11 A. I don't recall. We could
12 certainly look at the figures.

13 Q. Okay. What document would be --

14 A. The income statements that we
15 looked at this morning.

16 MR. CONDERN: 46?

17 THE WITNESS: Yes.

18 A. Yes, there was a decrement, a
19 sizable decrement in 1983.

20 Q. Can you tell me how much it was
21 according to the report?

22 A. It was \$63,000,000 rounded.

23 Q. Why did Brown & Williamson
24 experience that \$63,000,000 figure?

25 A. Because our leaf inventory at

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1 the end of 1983 was less than our inventory at the end
2 of 1982.

3 Q. Was that a reflection that
4 purchases of leaf tobacco and inventory exceeded
5 purchases of leaf tobacco for inventory?

6 A. Yes.

7 Q. Had Brown & Williamson predicted
8 for 1983 a decrement of that size?

9 A. Since I was at BATOS during the
10 planning, I don't recall.

11 Q. If Brown & Williamson had
12 predicted the drop in sales volume that it experienced
13 in 1983 --

14 MR. KLOTZ: Object to the form.

15 Q. -- it would have been able to
16 adjust its purchases -- withdrawn.

17 Let me show you what's been
18 previously marked as Bacon Exhibit 3, Mr. Meger.

19 A. Okay.

20 Q. Have you seen Bacon Exhibit 3
21 before?

22 A. Yes.

23 Q. It shows at the bottom left-hand
24 corner a cc to JM and CJM.

25 A. That's correct.

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821 204816

1 Q. Who is you?
2 A. That's correct.
3 Q. And JM stands for Mr. McDonough?
4 A. That's correct.
5 Q. There are some handwritten
6 figures on this page next to -- under the heading of
7 the typed dollars and millions. Appears to say green
8 pounds with some numbers.
9 A. Uh-huh.
10 Q. Do you recognize the
11 handwriting?
12 A. I think -- I'm not certain. I
13 think that's Conrad Klein's handwriting.
14 Q. Your understanding of that
15 column would be that the GR pounds stands for green
16 pounds?
17 A. Yes.
18 Q. And that the figures that appear
19 under that column reflect the green pound decrement
20 for the corresponding dollar figure decrement?
21 A. Yes.
22 Q. These figures of dollar
23 decrements for 1984 through -- including the
24 handwritten ones -- '86 relate to the then current
25 five-year plan for 1984 to 1988?

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B24 20482

1 MR. KLOTZ: Object to the form.
2 A. I would assume that's correct.
3 Q. Let me show you a document
4 entitled Brown & Williamson Tobacco Corporation, 1964-
5 1988 Corporate Plan, and it has a -- in the lower
6 right-hand corner it says November 1983.
7 A. Un-hun.
8 Q. And the stamp numbers, which are
9 somewhat illegible, they are, I think, 1923 -- looks
10 like 15 through 25.
11 MR. KLOTZ: Are you marking
12 this?
13 MR. TOPMAN: Yes. We'll put
14 this as Heger Exhibit 12, for identification.
15 (Whereupon, exhibit 12 was marked for
16 identification.)
17 A. Okay.
18 Q. Can you identify what we've
19 marked as Heger Exhibit 12, for identification?
20 A. Yes. It's the 1984 to '88
21 corporate plan.
22 Q. And if you would look at Page 17
23 of the document --
24 A. Un-hun.
25 Q. -- there is a chart showing

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824 20483

1 domestic business unit volume forecast, and then
2 international business unit volume forecast and then a
3 total respectively for each of them, I guess.

4 when calculating a projection
5 for LIFE decrement, did Brown & Williamson, for the
6 1984 through '86 figures on section 3, use just the
7 domestic volume or also part of the international, as
8 well?

9 MR. KLOTZ: Object to the form.
10 Do you know how that was calculated?

11 MR. TOPMAN: Your time will
12 come, Marty.

13 A. I would assume that it was both
14 domestic and international, but it may have just been
15 domestic since there was very little change in
16 international.

17 Q. Okay. The domestic volume, at
18 least from '84 to '86, is relatively flat in the
19 corporate plan.

20 A. Repeat the question -- the
21 statement.

22 Q. Yes. The domestic unit volume
23 forecast in the corporate plan for the years 1984
24 through 1986 is basically flat.

25 A. Including new products.

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824 20484

1 Q. Yes. And under that scenario,
2 would it be correct that normally purchasings and
3 usings would be in balance if you --

4 A. MR. KLOTZ. Object to the form.

5 Q. -- if you address just the
6 volume scenario?

7 A. Yes.

8 Q. Yet the Bacon 3 for 1984, for
9 example, shows an 11.2 dollar decrement including --
10 when you include new products.

11 A. Un-hun.

12 Q. Can you explain to me the basis
13 for the 11.2 figure?

14 A. I'd say because the
15 international sales were going down, and as far as
16 leaf purchases, we are very -- as far as leaf buying,
17 we are very conservative.

18 Q. When you say conservative, in
19 what respect?

20 A. We won't buy to our normal
21 quantities as far as on the come of the success of an
22 anticipated new product as Richland was at that time.

23 Q. I see. In 1984, first quarter,
24 did Brown & Williamson discuss various ways of trying
25 to alleviate its LIFO decrement problem?

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824 20485

1 A. Yes.

2 Q. Let me show you a document dated
3 March 21, 1984, on BATOS letterhead. It's entitled
4 March 16 LIFO meeting, and the stamp numbers are
5 251579 through 86.

6 S. MR. TOPPAN: we'll mark that as
7 larger Exhibit 13.

8 (whereupon, exhibit 13 was marked for
9 identification.)

10 A. Okay.

11 Q. Do you recall attending a
12 meeting roughly in the middle of March 1984 to discuss
13 B&W's LIFO decrement?

14 A. Yes.

15 Q. And do you recall that Mr. Bacon
16 attended with you?

17 A. Yes.

18 Q. Where was the meeting held?

19 A. I don't remember.

20 Q. Did Mr. Oliver attend?

21 A. I thought that these -- let me
22 read this first paragraph. Yes, it says he attended.

23 Q. Who is Mr. Oliver?

24 A. Mr. Oliver is the tax manager at
25 BATOS, director of taxes at BATOS.

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B24 20486

1 Q. And Mr. McDonough also testified
2 with you, correct?

3 A. That's what it says.

4 Q. At this meeting the alternatives
5 that were discussed were basically six items, correct?

6 A. Correct.

7 Q. One was going from multiple pool
8 LIFO accounting to natural business unit pooling LIFO
9 accounting, and the others were contract
10 manufacturing, processing or manufacturing for others,
11 terminating the LIFO election, obtaining legislative
12 relief or using shelter techniques, correct?

13 A. (Affirmative nod.)

14 Q. Regarding Exhibit 13, did you
15 receive a copy of that?

16 A. Yes.

17 Q. And the initials at the end of
18 the document or prior to the attachment shows DAS.
19 Those are Mr. Schechter's initials?

20 A. That's correct.

21 Q. And D. A. Schechter was with
22 DAS?

23 A. Yes.

24 Q. What was his position there?

25 A. General counsel.

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1 Q. And he was the one who wrote
2 this memo. Heger Exhibit 13?

3 A. That's correct.

4 Q. If you would turn to Page 2 of
5 Heger 13, and particularly the sentence that reads:
6 "Since the difference between the carrying values of
7 the new layers and their current year costs is less
8 than the comparable difference for the domestic leaf
9 layers, future LIFO decrements would be far less
10 costly than if we stay on our existing multiple pool
11 LIFO format."

12 At the meeting that was a
13 subject of discussion in March of '84?

14 A. Yes.

15 Q. And did you agree with that?

16 A. Yes.

17 Q. And is that a principal reason
18 why Brown & Williamson did in fact change the LIFO
19 system in 1984?

20 A. Yes.

21 MR. TUPMAN: Let's mark as Heger
22 Exhibit 14, for identification, a document dated April
23 11, 1984 from Mr. Schneider to Mr. Frigon. Stamp
24 numbers are 252485 through 86.

25 I point out to you, Mr. Heger,

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824 20488

1 that the document is internally numbered Page 1, 2 and
2 then jumps to 5, but I believe that's the way it was
3 produced to us based upon the consecutive stamp
4 numbers.

5 (Whereupon, Exhibit 14 was
6 marked for identification.)

7 (A discussion was held on the
8 record.)

9 Q. Okay. Did you receive a copy of
10 this memo in its complete form, Heger Exhibit 14?

11 A. I don't see any evidence of it,
12 but I would think that I did.

13 Q. And the last page shows Mr.
14 Schnechter's initials?

15 A. Yes. ✓

16 Q. On Page 5 there is a second
17 option that is discussed or referred to. Do you know
18 what is being referred to there?

19 A. Don't remember.

20 Q. There is a footnote at the
21 bottom of the page which refers to the relationship of
22 the overall effect of BATFUS tax rate in the U.S. with
23 OR tax rules and their worldwide effect on BATFUS's OR
24 tax liability.

25 From the experience you had at

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824 20489

1 BATOS as well as at B&W. do you have an understanding
2 of how U.S. income or Brown & Williamson impacts on
3 the tax status of B.A.T.?

4 Q. I have a limited understanding.
5 The tax expense of BATOS becomes the tax expense --
6 becomes an expense of B.A.T. Therefore, if we have a
7 favorable income because of a decrement situation, the
8 tax associated with that becomes the effect on
9 B.A.T.'s earnings, which is negative, whatever the tax
10 expense is at BATOS in the United States.

11 MR. TOPMAN: Could you read that
12 back, please?

13 (The court reporter read the
14 record.)

15 Q. Mr. Neher, if Brown & Williamson
16 pays more tax because it has more income, that
17 increment in tax is treated as an expense in B.A.T.,
18 reducing --

19 A. That's right.

20 Q. -- B.A.T.'s income.

21 A. That's correct.

22 Q. Thereby reducing B.A.T.'s income
23 tax in England?

24 A. I can't talk to that.

25 MR. TOPMAN: Read me back my

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B24 20430

1 question.

2 (The court reporter read the
3 record.)

4 Q. I'll try to break it down. If
5 B.W.'s income increases, it pays an increment of income
6 tax in the United States, correct?

7 A. Correct.

8 Q. That increment in income tax is
9 treated as an expense by B.A.T. in England, correct?

10 A. Correct.

11 Q. That reduces B.A.T.'s income.

12 A. Correct.

13 Q. Which you can't -- or you can
14 address --

15 A. I can address that the effect of
16 what you just talked about is negative on B.A.T.'s
17 earnings.

18 Q. From the standpoint of how much
19 tax they pay or just --

20 A. From the standpoint of how much
21 tax expense they have to put on their income
22 statement.

23 Q. In May of 1964, did Brown &
24 Williamson undertake a study in order to determine
25 whether it would apply to the Internal Revenue Service

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824 20491

1 for permission to change from the existing multiple
2 pool LIFO accounting to natural business unit pool
3 LIFO accounting?

4 Q MR. KLOTZ. Can I hear that
5 back? You are asking about whether they undertook a
6 study to apply rather than did they apply?

7 MR. TOPMAN: That's correct.

8 MR. KLOTZ: Okay.

9 A. I don't remember the date, but
10 we did study this subject throughout the year in 1984.

11 Q. Let me show you what's been
12 previously marked as Bacon Exhibit 12, for
13 identification. It's a document dated June 18, 1984,
14 from Mr. Tucker to yourself, with copies to Mr. Bacon
15 and others.

16 A. Okay.

17 Q. Mr. Tucker, in June of '84, was
18 in your department?

19 A. He worked for Mr. Bacon.

20 Q. And did you receive a copy of
21 Mr. Tucker's memorandum to you dated June 18, 1984?

22 A. It was directed to me.

23 Q. There is a reference in the
24 second paragraph of Mr. Tucker's memo about the New
25 LIFO election, that on June 5 -- I'm sorry, "Our June

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1 5 estimate demonstrated the benefits that would accrue
2 under ASB."

3 Let me show you what we'll mark
4 as Heger Exhibit 15, for identification, which is a
5 document entitled Projected Benefits Of A Natural
6 Business Unit Method Of LIFO Value Determination
7 versus Current Multiple Pools, 1984 through 1988.
8 Stamp numbers are 251030 through 47.

9 (Whereupon, Exhibit 15 was marked for
10 identification.)

11 A. Okay.

12 Q. Have you reviewed Heger Exhibit
13 15, Mr. Heger?

14 A. I haven't read the whole thing.
15 I've scanned through it.

16 Q. You received a copy of that from
17 Mr. Tucker?

18 A. I don't recall receiving this
19 document.

20 Q. Let me direct your attention to
21 page 12.

22 A. Okay.

23 Q. The second paragraph, full
24 paragraph, which refers to a June 5 estimate?

25 A. Un-hun.

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Q. The estimate that's referred to there, do you know whether that was the basis for Brown & Williamson deciding to apply to the Internal Revenue Service to change from the multiple pool LIFO accounting system to the natural business unit LIFO accounting system?

MR. KLOTZ: Object to the form.

A. I think that we knew the number was still very soft. The number was a moving target all through the year, but we knew there was a decided advantage, from all the calculations that were made, to continue with our study of going to natural business unit.

Q. And I note that in Mr. Tucker's memo to you he says that the estimate that he refers to there was based upon an assumption that Brown & Williamson's volumes would decline over the next five years, 1984 to 1986. Did you have any discussions with Mr. Tucker with respect to proceeding on that basis?

A. I don't recall.

Q. Do you recall whether you had discussions with anyone at Brown & Williamson with respect to the assumptions of future year's sales volumes that were used in evaluating whether to go to

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1 the NSU system?

2 A. The reason that we looked at a
3 possible accounting change in LIFO and these other
4 areas or possible help with the LIFO decrement is
5 assuming that sales would have a downward trend -- sales
6 volumes would have a downward trend. If this was not
7 the assumption, then it wouldn't have been any
8 advantage to change LIFO methodology.

9 Q. In June of 1985, Brown &
10 Williamson did make the application for permission to
11 change from the NSU -- I'm sorry, from the multiple
12 pool LIFO system to the NSU LIFO system, correct?

13 A. The application was made. I
14 don't recall the date.

15 MR. PUPHAN: Let's mark as Heger
16 Exhibit 16, for identification, a file note dated
17 January 30, 1985, the typed name, Carl J. Heger,
18 stamp numbers 159802 through 04.

19 (Whereupon, Exhibit 16 was marked for
20 identification.)

21 A. Okay.

22 Q. Did you write Heger Exhibit 16?

23 A. Yes.

24 Q. In the Paragraph 5 in the last
25 sentence you refer to favorable elements of cost. Is

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1 that a reference to out-of-pocket savings or costs?

2 MR. KLUTZ: Object to the form.

3 A. Would you repeat your question?

4 MR. TOPMAN: Would you read it
5 back?

6 S. (The court reporter read the
7 record.)

8 A. Yes.

9 Q. The sentence includes a
10 reference to an "Opportunistic flue-cured pool
11 purchase in 1984." What does that refer to, Mr.
12 Heger?

13 A. I don't recall the details, but
14 I believe it would mean again what this -- we just
15 referred to as favorable elements of cost, an
16 opportunity to buy flue-cured from the pool that would
17 be cheaper than buying it at auction.

18 Q. And the next phrase says,
19 "Favorable processing rates because of higher volume
20 at Wilson." What does that refer to?

21 A. That means that the total
22 poundage to be processed at Wilson was higher when
23 this was written than at some previous time, which
24 means that the processing rates would be spread over
25 more poundage, making the overheads at Wilson, assigned

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1 to each pound, less.

2 Q. Does that favorable processing
3 rate, is that incorporated in the -- as an out-of-
4 pocket cost?

5 A. It goes into leaf cost.
6 Whatever the processing costs are, they go into the
7 leaf cost.

8 Q. So in a sense it's an out-of-
9 pocket savings for Brown & Williamson as opposed to
10 export leaf?

11 A. It's all Brown & Williamson.

12 Q. What I'm trying to get to is how
13 is it an out-of-pocket savings?

14 A. Well, it means that eventually
15 whenever that leaf that's processed is used, it's at
16 some lower rate which means our expenses are less and
17 our profits are more.

18 Q. There is also in that same
19 sentence a reference to imports as another favorable
20 element of cost. What does that refer to?

21 A. It refers to imported tobacco.
22 But I don't remember the details of what was being
23 referred to here.

24 MR. TOPHAN: Maybe it would be a
25 good time to take a five-minute break. Okay.

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MR. KLOTZ: That would be great.

(A short recess was taken.)

MR. TOPHAN: Let's mark as Hegar

Exhibit 17, for identification, a document, stamp

number 199777A through G, 1985 Actual Leaf LIFO Rates.

(Whereupon, Exhibit 17 was marked for identification.)

Q. Can you identify the document?

A. No.

Q. Okay, thanks.

I show you what's previously been marked as Bacon Exhibit 18, for identification.

This is a document from Mr. Brown to Mr. Schneider, dated May 31, 1985.

A. I have no knowledge of this document, either.

Q. Do you have any understanding of what the resale pool was comprised of which was excluded from the NBO calculation?

I would address your attention to the second page of the document.

A. The second page of this document, Bacon 18?

Q. Yes.

A. Oh.

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 MR. KLOTZ. Object to the
2 question.

3 A. I can't help you. I don't
4 recall anything about that.

5 Q. Fair enough. Are you familiar
6 with the buying season for domestic burley?

7 A. The buying season for domestic
8 burley?

9 Q. Un-hun.

10 A. Yes, I am.

11 Q. Did Brown & Williamson have a
12 rule of thumb as to what percentage of the burley crop
13 they would buy pre-Christmas and what they would buy
14 post-Christmas in the next year?

15 A. In a very general way, yes.

16 Q. And what was that?

17 A. 75 percent before Christmas and
18 25 percent after Christmas.

19 Q. I show you what's previously
20 been marked as Bacon Exhibit 23, for identification.
21 It's a file note by Mr. Bacon.

22 A. Un-hun.

23 Q. Did you receive a copy of this
24 file note from Mr. Bacon?

25 A. I don't remember it, but I'm

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11c

1 copied on it.

2 Q. Do you recall in the fall of
3 1984 that Brown & Williamson was experiencing a
4 5,000,000 green pound decrement --

5 MR. KLOTZ: Object to the form.
6 S Q. -- for the year 1984?

7 A. I really don't recall it, but
8 I'm sure we were.

9 Q. Do you recall why?

10 A. Well, the reason would have
11 been, again, that purchases would have been less than
12 usings.

13 Q. Do you recall why the purchases
14 were less than usings?

15 A. Not specifically, no.

16 Q. By the fall of 1984, Brown &
17 Williamson had already been in the business of
18 manufacturing generic cigarettes.

19 A. Correct.

20 Q. Let me show you what's been
21 marked as Bacon 24. It's a memo dated November 14,
22 1984, from Mr. Bacon to Mr. Dunn and yourself, with
23 copies to others.

24 A. Okay.

25 Q. Did you receive a copy of Bacon?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 exhibit 24?

2 A. Yes. I did.

3 Q. The gross requirements line in
4 the chart is based upon sales forecasts?

5 A. I find this memo very confusing.
6 I remember the document, but I can't seem to get the
7 numbers to -- in the tables to tie in with the
8 narrative.

9 The gross requirements, I would
10 assume, would be based on our normal way of calcu-
11 lating leaf durations.

12 Q. Right. Targeted purchases would
13 be what Brown & Williamson expected to buy?

14 A. I would think, yes.

15 Q. So that when the targeted
16 purchases/receipts exceed the requirements, does that
17 mean that Brown & Williamson is buying more tobacco
18 than it anticipates using?

19 MR. KLOTZ: Object.

20 A. I would assume that the company
21 is buying more tobacco than its normal duration
22 policies would require.

23 Q. And the amount on the
24 requirements column is a function of durations, as
25 also a function of projected sales during those

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B24 20501

1 durations?

2 A. Correct.

3 Q. Would it be a fair

4 interpretation or where it says targeted purchases
5 exceed requirements. that a possible reason for that
6 was because Brown & Williamson was buying tobacco in
7 excess of its sales forecast that were used in
8 calculating the requirements?

9 MR. KLOTZ: Object to the form.

10 A. Would you repeat that question?

11 MR. TOPMAN: Could you read it
12 back to Mr. Heger?

13 (The court reporter read the
14 record.)

15 A. It would be correct to say that
16 that's a possible reason.

17 Q. Do you believe that that was not
18 the reason that was accounting here for the excess of
19 targeted requirement numbers?

20 A. I don't recall the reason.

21 Q. The column in the chart that
22 says total at the bottom shows 20.9 with a plus sign?

23 A. Yes.

24 Q. Does that show that the targeted
25 purchases/receipts exceeded requirements by 20.9

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1 million green pounds?

2 A. That's the total of what the
3 four columns add up to.

4 Q. Does that fact that targeted
5 purchases/receipts exceed requirements by 20.9 million
6 pounds have any impact on whether or not Brown &
7 Williamson would experience a LIFO decrement in 1984?

8 A. No, not by itself. It would
9 depend on how much tobacco the company used versus how
10 much it purchased, is what constitutes a decrement.

11 Q. But by buying more than the
12 requirements, that would go towards reducing the
13 possibility of a decrement?

14 A. That's correct.

15 Q. The first paragraph of the memo --
16 I'm sorry, on Page 2 of the memorandum in the third to
17 the last paragraph, it says, "In summary, it is my
18 recommendation that we target the 44,000,000 green
19 pounds of burley pre-X-Mas to protect against a 1984
20 green pound decrement adjusting back to target
21 durations in 1985 should our sales not materialize."

22 That 44,000,000 burley pre-
23 Christmas is out of a total of targeted purchases and
24 receipts of 45,000,000; is that correct, Mr. Hagar?

25 MR. KLOTZ: Object to the form.

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1 A. I believe that's correct.

2 Q. And if one looks at the
3 relationship of 44 out of 46, that is a significantly
4 higher percentage of pre-Christmas purchases of burley
5 than was sort of the broad brush practice that Brown &
6 Williamson had?

7 A. I think it would be fair to
8 characterize it as a broad brush desire as opposed to
9 a practice.

10 Q. Okay. Off the record.

11 (A discussion was held off the
12 record.)

13 Q. By buying the 44,000,000 out of
14 the 46 of burley in 1984, that would leave -- using
15 the same targeted number -- 2,000,000 green pounds to
16 be purchased in '85, correct?

17 MR. KLOTZ: Object to the form.

18 A. If the numbers are correct, the
19 assumption is correct.

20 Q. Would it be correct that by
21 buying less in 1985 and more in 1984, you then create
22 a greater risk that you would have a decrease in
23 1985?

24 A. If your sales did not increase,
25 that is correct.

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824 20504

1 Q. When you say if your sales did
2 not increase, do you mean if they did not increase
3 over and above what the requirements calculation had
4 used?

5 A. Yes.

6 Q. Let me show you what's been
7 previously marked as Bacon 25. It's a memo dated
8 November 20th 1984 from Mr. Bacon to yourself, Mr. Dunn
9 and others.

10 A. Okay.

11 Q. The purchases that Mr. Bacon
12 recommended in his prior memo of burley, 44,000,000
13 pounds, in this memo, Bacon 25, it's, I believe,
14 referenced as 44.5 million green pounds.

15 A. Un-huh.

16 Q. Out of the 46 total burley crop
17 for '84 and '85.

18 A. Un-huh.

19 Q. The purchase of that 44.5
20 million green pounds in 1984 leaving 1-1/2 million
21 green pounds for purchasing in 1985, was approved by
22 Dr. Hughes?

23 A. Un-huh.

24 Q. If you would just take a look
25 again for one moment at Bacon 25, the last paragraph --

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1 or the next to the last paragraph, excuse me, says --

2 A. Oh, I'm sorry.

3 Q. -- "An additional problem

4 identified was that Wilson would only be able to
5 process and ship pre-X-mas some 22,000,000 green pound
6 equivalence."

7 First let me ask you: The
8 purchase of the 44.5 burley pre-Christmas was made in
9 accordance with the proposal and approval by Dr.
10 Hughes?

11 A. I don't remember, but I feel
12 sure it was.

13 Q. Do you know why Wilson was
14 unable to process roughly half of that in 1984?

15 A. Capacity problem. Well, that's
16 really not a correct answer. It's more of a timing
17 problem before Christmas because you have very few
18 days with that much poundage coming in that it's too
19 much poundage to process in too few days.

20 Q. Right. So that when it came in,
21 they didn't have the capacity?

22 A. They didn't have the time or the
23 capacity.

24 Q. Okay. And next year they would
25 then process it in 1985?

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- 1 A. After the first of the year.
- 2 Q. Does a reduction in durations or
3 the time which the tobacco is held in inventory
4 increase the likelihood of a LIFO decrement?
- 5 A. Yes.
- 6 Q. Let me show you what's been
7 previously marked as Bacon Exhibit 2, for
8 identification, a memo entitled LIFO Leaf.
- 9 A. Okay.
- 10 Q. On the second page it says copy
11 given to three people including CJH.
- 12 A. Un-nun.
- 13 Q. Did you receive a copy of Mr.
14 Bacon's memo?
- 15 A. I apparently did.
- 16 Q. Do you have a recollection of
17 receiving it?
- 18 A. No.
- 19 Q. On the first page there is a
20 heading, Background General.
- 21 A. Un-huh.
- 22 Q. And it describes as one of the
23 three benefits of utilizing LIFO.
- 24 A. Yes.
- 25 Q. And then it says the only

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1 relevant negative to using LIFO is that B&W entity
2 trading profit and net income is lower than would be
3 reported under the FIFO method of inventory
4 evaluation.

5 A. Un-nun.

6 Q. FIFO is another method of
7 costing your inventory, correct?

8 A. Un-nun.

9 Q. It is possible, however, under
10 LIFO, is it not, to eliminate that only relevant
11 negative?

12 O MR. KLOTZ: Object to the form.

13 A. Well, it depends on whether your
14 business is going up or whether it's going down.

15 Q. But one of the ways of
16 eliminating that only relevant negative is to have a
17 LIFO decrement?

18 A. That's very true, which means
19 that's an unfavorable situation because you are paying
20 out more tax dollars.

21 Q. And that's because your trading
22 profits increased?

23 A. Which is artificial. of course.

24 Q. Is the fact that the trading
25 profits and net income is lower under FIFO methods.

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1 artificial?

2 MR. KLOTZ: Object to the term.

3 A. In a layman's terms, what you
4 would like to do is match current cost with current
5 revenues. So, therefore, if your sales would be
6 exactly even, and under the LIFO method of accounting
7 your purchases and usings would be exactly the same
8 each year, then that would be the most accurate way to
9 show how a company is going in its performance.

10 Q. But --

11 A. But that's not the real world.
12 You are either going up or you are going down.

13 Q. But looking at, for the moment,
14 the --

15 A. A company's existence is that it
16 wants to produce cash and have cash flow. When you
17 have decrements, that takes cash out of your business.

18 Q. The relevant negative that is
19 described in the memo says that B&W's trading profit
20 and net income is lower under FIFO.

21 A. It's lower than would be
22 reported under the FIFO method.

23 Q. Yes. Is that any more or less
24 artificial than the profit that accrues when you have
25 a LIFO decrement under the LIFO system?

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24 20509

1 schedule in our reporting to BATUS because in BATUS'
2 reporting to UK they have to negate LIFO since in the
3 UK the LIFO method of accounting is not allowed. So we
4 always have to convert for B.A.T. from a LIFO basis to
5 a FIFO basis. That is done at BATUS.

6 Q. There is a footnote on Schedule
7 3.

8 A. Uh-huh.

9 Q. Which says that, "If no changes
10 are made in the support program, and given B&W's
11 current leaf stocks are in excess of target duration,
12 B&W's 1985 purchase^o pounds would be on the order of
13 25,000,000 pounds less, than usings resulting in an
14 approximate \$25,000,000 pretax benefit (decrement) as
15 we would be working on a 1 1/4 percent NBU layer."

16 Brown & Williamson did not have
17 a pound decrement in 1985, did it?

18 A. That's correct.

19 Q. And that's because it went out
20 and bought leaf in excess of its targets?

21 A. Among other things^o, yes.

22 Q. What other things that you
23 recall?

24 A. We deferred shipment of some
25 associated companies' inventories until 1986.

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B24 20510

1 Q. That was by ELT?
2 A. By Brown & Williamson.
3 Q. Where it says in that footnote.
4 25,0000.000 pounds. that's green pounds?
5 A. I think so.
6 MR. TOPMAN: Let's mark as Heger
7 Exhibit^s 19, for identification, four pages entitled
8 Extract Of BATUS Executive Committee Meeting Held On
9 September 24, 1985, stamp numbers 190320 through 23.
10 (Whereupon, Exhibit 19 was marked for
11 identification.)
12 A. Okay.
13 Q. Have you ever seen any of these
14 pages before?
15 A. I don't recall ever seeing this.
16 no.
17 (A short recess was taken.)
18 Q. Let me show you what's been
19 previously marked as Heger 6, for identification.
20 MR. KLOTZ: Bacon 6?
21 MR. TOPMAN: Heger 6.
22 MR. KLOTZ: You are giving back
23 one. Okay.
24 Q. It's stamp number that I'd like
25 you to look at is 021336, and particularly Paragraph D

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1 on that page.

2 A. Un-nun.

3 Q. In your previous testimony, I

4 believe you referred to a deferral of sales --

5 A. Un-nun.

6 Q. -- in relationship to your
7 testimony about the avoidance of a decrement in 1965 --

8 A. Un-nun.

9 Q. -- is this, what is described in
10 Paragraph D, what you were referring to?

11 A. Yes.

12 Q. And the projected effect of that
13 was a decrease in trading profit of 1.2 million
14 dollars.

15 A. Yes.

16 Q. That's out-of-pocket dollars,
17 correct, real dollars?

18 A. Yes.

19 Q. Or cash flow. I hand you what's
20 been marked as Heger Exhibit 12, for identification,
21 and direct your attention to Page 18, and the sentence
22 that reads --

23 A. Let me go back to the prior
24 answer because I don't want to mislead you. My answer
25 is as it affects Brown & Williamson but not as it

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1 affects B.A.T.

2 Q. Could you explain that?

3 A. I can't explain it in its
4 entirety, but these are sales to associated companies.
5 so whatever profits we make from associated companies
6 is negated in group consolidation in London, so while
7 it's a profit -- while it's a deferral of profit to
8 Brown & Williamson, it's negated in consolidation for
9 B.A.T.

10 Q. Heger 12, Page 18, the sentence
11 I'd like you to look at there is the sentence
12 beginning with "Net assets will decline over the
13 planned period as working capital requirements are
14 reduced to match lower volume expectations." It's
15 right there. You are free of course, to review the
16 whole document or any parts of it.

17 MR. KLOTZ: I'm sorry, what was
18 the sentence again you are calling his attention to?

19 MR. TOPMAN: Do you have it?

20 MR. KLOTZ: Got you.

21 A. Okay.

22 Q. The working capital requirements
23 there are predominantly leaf inventory?

24 A. Yes, they would be.

25 Q. And there is a reference where

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1 it says they were -- the working capital requirements
2 during the planned period are reduced to match lower
3 volume expectations. And is that a reference to the
4 sales projections on the prior page?

5 A. Yes.

6 Q. And the way you get to lower
7 volume expectations is to take the domestic total
8 together with Brown & Williamson exports under the
9 international business?

10 A. And whatever is thought to be in
11 ELT's inventory for stockpile customers.

12 Q. MR. TOPMAN: Could you just
13 repeat one more time the answer?

14 (The court reporter read the
15 record.)

16 Q. That last thing that you
17 mentioned, the leaf inventory for stockpile customers,
18 that is not reflected on the prior page which shows
19 domestic unit volume and international unit volume
20 forecasts?

21 A. What's on the page you refer to
22 are cigarette sales.

23 Q. And the stockpile sale is just
24 leaf tobacco sales?

25 A. Yes.

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B24 20513

1 MR. TOPHAN: Let me mark as
2 Heger 20. for identification, a document, the cover
3 page of which is not legible, but the second page of
4 which is titled Brown & Williamson Tobacco Corporation
5 1985-1989 Corporate Plan; dated October 1984, revised
6 February 1985. It's stamp numbers are illegible.

7 MR. CONDREN: They appear to be
8 191906 through 191979.

9 (Whereupon, Exhibit 20 was marked for
10 identification.)

11 A. Okay.

12 Q. Can you identify Heger Exhibit
13 20?

14 A. Yes.

15 Q. What is it, sir?

16 A. It's the five-year plan.

17 Q. Of Brown & Williamson?

18 A. Yes.

19 Q. If you would look at Page 6 of
20 Heger 20, it says -- there is a subdivision called low
21 margin.

22 A. Yes.

23 Q. "The issue with regard to low
24 margin brands is to be able to continue exploiting
25 entries in these segments for the purpose of

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B24 20514

1 protecting volume and share while minimizing losses in
2 contribution."

3 The reference there to low
4 margin brands includes generics of Brown & Williamson?

5 A. Yes.

6 Q. And the full price branded
7 cigarettes of Brown & Williamson, do they have a
8 higher margin than Brown & Williamson made on generics
9 in 1984?

10 A. Would you repeat the question?

11 Q. Sure.

12 O MR. TOPMAN: Would you read it
13 back? I'll just rephrase it.

14 Q. In 1984, did branded cigarettes
15 of Brown & Williamson, which were at full price,
16 provide a higher margin to Brown & Williamson than
17 Brown & Williamson earned on its generic cigarettes?

18 A. The answer is yes.

19 Q. The margins on the full price
20 branded were more attractive to Brown & Williamson
21 than that on generics?

22 A. Yes.

23 Q. Would you look at stamp number --
24 there are some financial schedules attached to the
25 five-year plan.

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B24 20515⁶

- 1 A. Un-hun.
- 2 Q. And one of them is Schedule 3.
- 3 A. Tobacco group cash flow?
- 4 Q. Yes, sir. Could you explain
5 that schedule, the concept?
- 6 MR. KLOTZ: Object to the form.
- 7 A. Yes, I can explain it.
- 8 Q. Would you do that, please?
- 9 A. It's a schedule that begins with
10 trading profit and goes through the adjustments that
11 are made and the way operating cash flow is arrived at
12 for the tobacco group methodology that is in concert
13 with the way BATFUS wants cash flow from B&W
14 calculated.
- 15 Q. Is there done an analysis of the
16 cash flow statement so that you can tell what is
17 predominantly responsible for either an increase or
18 decrease in cash flow on a year-to-year basis?
- 19 A. Well, yes, there is. Actually,
20 this schedule here will point a person as to where
21 they want to look because it starts with trading
22 profit. And wherever there is a major difference you
23 can go to trading profits, depreciation, fixed assets,
24 addition and all down the line.
- 25 Q. This trading profit figure --

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1 A. Yes.
2 Q. -- is that calculated after
3 taking into account any LIFO expense?
4 A. Yes.
5 Q. Accruing from say a LIFO
6 decrement?
7 A. Yes.
8 Q. In Schedule 3 --
9 A. Same schedule?
10 Q. Yes, sir. the same schedule, the
11 operating cash flow schedule.
12 A. Un-nuh.
13 Q. There is no adjustment on this
14 particular one for a LIFO decrement. In 1983 -- not
15 the five-year plan period -- there, however, was a
16 LIFO decrement. correct?
17 A. In 1983?
18 MR. KLOTZ: Object to the form.
19 Q. In 1983 --
20 A. Yes.
21 Q. -- Brown & Williamson had a LIFO
22 decrement?
23 A. Yes.
24 Q. On the operating cash flow
25 statement, Schedule 3, there is no adjustment to the

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824 20517

1 trading profit figures in order to arrive at the cash
2 flow figure for purposes --

3 MR. TOPMAN: I'll withdraw it if
4 you're going to stipulate.

5 Q. On Schedule 3, the operating
6 cash flow statement, the cash flow, which is
7 calculated with the adjustments from trading profit,
8 does not use an adjustment for the fact that there was
9 a LIFO decrement in 1983?

10 A. O That's correct.

11 Q. There is also a Schedule 13 in
12 this packet. O

13 A. Operating cash flow statement.

14 Q. Yes. In what fashion is that
15 different from the prior one, Schedule 3?

16 A. It's not different at all. It's
17 just in more detail. Same numbers. P

18 Q. There is a memo item at the
19 bottom of this one, however, which talks about DEC
20 (INC) LIFO Reserve.

21 A. Uh-huh. P

22 Q. Does that stand for decrease or
23 increase in LIFO reserve? Q

24 A. Yes. Q

25 Q. That is not the same thing as - S

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1 LIFO decrement; is that correct?

2 A. No.

3 Q. Just to make sure I understand.

4 is it not the same thing?

5 A. It is not the same thing.

6 Q. On Schedule 14, Page 1 of 3 --

7 A. Yes.

8 Q. -- still in the same corporate
9 plan --

10 A. Uh-nuh.

11 Q. -- there is a line item under
12 capital expenditures, one, Macon Branch Expansion.

13 A. Yes.

14 Q. Could you just describe briefly
15 what that relates to?

16 A. The Macon branch's expansion was
17 a capital project that was the closing of the
18 Louisville manufacturing facility and expanding Macon
19 to absorb the production coming from Louisville.

20 Q. When did that happen?

21 A. That happened over a period of
22 years beginning with the announcement in the late
23 '70's to close the Louisville facility.

24 Q. And it continued through 1983?

25 A. Almost -- yes, but almost all

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1 the spending was complete in 1980 -- the bulk of the
2 spending was complete by 1982 and 1983.

3 Q. In the schedule that we are
4 expressing, 14, it shows for 1983, actual spending for
5 that project of 18.7 million dollars; is that right?

6 A. Yes.

7 Q. With an estimate for 1984 of 9.9
8 million dollars?

9 A. Yes.

10 Q. And a budgeted. I guess, figure
11 for 1985 of 2.1 million dollars?

12 A. Yes.

13 Q. The figure at the end of that
14 line item, total spending, 30.7 million dollars, does
15 that represent just the total that's on this page as
16 opposed to the total cost of the expansion?

17 A. Yes.

18 Q. Do you recall generally what the
19 total cost of the Macon expansion program was?

20 A. It was over \$200,000,000.

21 Q. Was its purpose simply to expand
22 Macon's capacity so it could absorb Louisville?

23 A. Yes.

24 MR. KLOTZ: We are getting
25 pretty close to the time we have to knock off.

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B24 20520

1 MR. TOPMAN: Let me go off the
2 record.

3 (A discussion was held off the
4 record.)

5 Q. Still on this financial schedule
6 section. If you would turn to the page entitled at the
7 top Impact Of Not Introducing New Brands Continued.

8 A. Yes.

9 Q. In the last paragraph it says,
10 "The following sensitivity assumes the company's
11 volume is impacted at the same rate as the industry,
12 i.e., share is maintained." And then on the next page
13 it gives volumes. Does the next page reflect the
14 reduction?

15 MR. KLOTZ: Object to the form.

16 A. The next page --

17 MR. KLOTZ: Object to the form.

18 MR. TOPMAN: I'll rephrase it.

19 It's getting late.

20 Q. The sentence that I asked you to
21 take a look at refers to a sensitivity. Is that
22 sensitivity what is shown in the chart on the next
23 page?

24 MR. KLOTZ: Object to the form.

25 A. Yes.

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821 20521

Q. And so where it shows volume in billions and negative figures '86, '87 and '88, that is based on the prior sentence that if Brown & Williamson maintained its share, its volumes of sales would be reduced by those amounts in those years?

A. Yes.

Q. Had Brown & Williamson been maintaining its share in 1983 and '84?

A. No.

Q. Had it been decreasing in its share?

A. Yes.

MR. TOPMAN: We'll adjourn and resume tomorrow morning.

(Recess for the evening.)

* * * * *

MR. KLOTZ: Before we get started, I want to give you copies of some financial statements that I understand you've asked for. I have here copies of Brown & Williamson's financial reports for July, August, September, October, November and December of 1984 and January, February, March, April and June of 1985. I have not had an opportunity to stamp these confidential. Can I have your assurances this will be treated as if every page was stamped

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1 confidential?

2 MR. TOPMAN: I think what we
3 ought to do is somehow get them stamped because it's
4 probably a better way of doing it.

5 Can Mr. Heger identify those?

6 MR. KLOTZ: I believe so. I
7 don't see no reason why he can't.

8 MR. TOPMAN: Why don't we just
9 make them exhibits?

10 MR. KLOTZ: Fine.

11 MR. TOPMAN: And then the
12 reporter can take them after they've been marked. How
13 long will it take you to stamp them?

14 MR. KLOTZ: We can stamp them in
15 New York and get them back to you in a day or so.

16 MR. TOPMAN: Why don't we do
17 that.

18 MR. KLOTZ: Fine.

19 MR. TOPMAN: That way the
20 reporter will have them. Do we need these in our
21 possession?

22 MR. CONDREN: No.

23 (A discussion was held off the
24 record.)

25 MR. KLOTZ: Should we make this

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1 a single exhibit?

2 MR. TOPMAN: That's fine.

3 MR. KLOTZ: I'll put a rubber
4 band around them because I've already identified --
5 I'll put a rubber band around them after Mr. Heger has
6 had a chance to look at them and after you -- I'll let
7 her mark the top page.

8 MR. TOPMAN: The document that
9 Mr. Klotz has just said that he is producing, namely
10 the monthly financial reports of Brown & Williamson
11 for the months he enunciated, have been marked as
12 Heger Exhibit 21. for identification.

13 (Whereupon, Exhibit 21 was marked for
14 identification.)

15 Q. Have you reviewed them?

16 A. Yes.

17 Q. Can you identify them for me,
18 Mr. Heger?

19 A. Yes.

20 Q. What are they, sir?

21 A. They are the financial reports
22 as enumerated for Brown & Williamson.

23 Q. When you say enumerated you mean
24 for the months Mr. Klotz said which appear on the
25 first page of each report?

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824 20524

A. That's correct.

Q. Okay, fine.

MR. KLOTZ: Why don't I now take these back. I'll have them marked stamped confidential, and then I'll return you a copy promptly.

MR. TOPMAN: Okay. I want you to keep them separated because I may have some questions on that.

MR. TOPMAN: Let me mark this as Heger Exhibit 22, for identification, please. It's entitled Index in the front, first line item is standard costing. Stamp numbers 44073 through 44172.

(Whereupon, Exhibit 22 was marked for identification.)

(A discussion was held off the record.)

A. Okay.

Q. Can you identify the exhibit, sir?

A. No.

Q. Thank you. I'll show you what's previously been marked as Bacon Exhibit 67, the first page of which is a memorandum dated February 20, 1985, from Mr. Bacon to yourself and Mr. Konhorst, with copies to others.

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824 20525

1 Have you reviewed the document?
2 Mr. Eger?

3 A. Yes.

4 Q. Did you receive a copy of the
5 first page of the memorandum?

6 A. Yes.

7 Q. Along with it were there other
8 pages or the memorandum, or attached to the
9 memorandum?

10 A. The memo indicates that Mr.
11 White's memo of February the 13th was attached, but I
12 don't recall this memo.

13 Q. You mean Mr. White's memo?

14 A. Mr. White's memo.

15 Q. In the last paragraph of the
16 memorandum it also says attached is a copy of the
17 XLF752B leaf formula sheets and the current B&W 1433
18 blend. Are those attached to the memorandum?

19 A. Is it attached to this
20 memorandum? Yes, it is.

21 Q. And there is a reference in the
22 first paragraph to an Exhibit 1, and that is also
23 attached to the memorandum?

24 A. Yes.

25 Q. The low cost generic blend that

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1 is referred to in this memorandum was implemented in
2 April of '85 for nonmenthol generics?

3 A. I don't recall the date.

4 Q. But at some point in time it was
5 implemented by Brown & Williamson?

6 A. That's correct.

7 Q. The sales units in this
8 memorandum of 8.6 billion sticks, that is for the
9 generics nonmenthol which are going to use the new low
10 cost blend, correct?

11 MR. KLOTZ: Object to the form.

12 Q. Let me withdraw it, and I'll ask
13 you a different way. The 8.6 billion sales units are
14 for what cigarettes?

15 A. Restate the question, please?

16 Q. Okay. The column on the
17 memorandum that shows sales units of 8.6 billion
18 sticks relates to the generic cigarettes which are
19 anticipated to be used in this new low cost blend.

20 MR. KLOTZ: Object to the form.

21 A. That's correct.

22 Q. Do you know for what period of
23 time, what year that sales forecast is for?

24 A. The generic sales forecast for
25 the year 1985 was 8.6 billion units. I assume this is

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1 the same number.

2 Q. And that was for all generic
3 menthol and nonmenthol cigarettes, correct?

4 A. That's correct.

5 Q. You have no recollection of
6 receiving the White memo dated February 13, 1985,
7 which is attached to the Bacon Exhibit 67?

8 A. I don't recall the memo.

9 Q. Do you have an understanding of
10 it at all?

11 A. I believe I understand it.

12 Q. What's Mr. White's position at
13 the Export Leaf Tobacco?

14 A. Mr. White is a vice president of
15 Brown & Williamson Tobacco Corporation.

16 Q. He wrote this on the Export Leaf
17 Tobacco Company letterhead, correct?

18 A. Yes, that's correct.

19 MR. TOPMAN: Could you read back
20 Mr. Heger's answer?

21 (The court reporter read the
22 record.)

23 Q. What are his responsibilities?

24 A. Mr. White's responsibility is
25 procuring leaf tobacco for Brown & Williamson Tobacco

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824 20528

1 Corporation.

2 Q. Does Export Leaf Tobacco have a
3 separate payroll system?

4 A. I don't understand the question.

5 Q. Does Export Leaf have -- I'll
6 change it a little bit. Does Export Leaf have a
7 separate set of accounts designated as Export Leaf
8 accounting accounts?

9 MR. KLOTZ: Object to the form.

10 A. Yes.

11 Q. And those Export Leaf accounting
12 accounts, is one of them a payroll account?

13 A. Yes.

14 Q.

15 **REDACTED**

REDACTED

16 A.

17 Q.

REDACTED

18 A.

That's correct.

19 Q. Who does Mr. White report to or
20 or who did he report to in February of 1963?

21 A. Mr. Dunn.

22 Q.

REDACTED

23
24
25
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REDACTED

REDACTED

MR. KLOTZ: Object to the form.

Would you repeat the question?

A.

Q.

REDACTED
REDACTED

REDACTED

A.

Yes.

Q.

What is that type or category of

worker?

A.

REDACTED

REDACTED

Q.

REDACTED

A.

Q.

REDACTED

REDACTED

Q.

Could you explain your

understanding of the February 13th, 1985 memo by Mr.

White which is part of Bacon Exhibit 57?

MR. KLOTZ: Object to the form.

A.

The first column is a grade

designation of tobacco. The second column indicates

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1 the stock of these grades on hand. The third column
2 indicates how much old crop would be available for
3 each grade. The fourth column indicates the dollars
4 per pound FOB those grades would cost if one would
5 choose to buy those grades. The fifth column
6 indicates future availability of those grades. And
7 the last column indicates how much it would cost one
8 to buy those future grades.

9 Q. The future availability is a
10 reference to 1985 crop?

11 A. It's a reference to whatever
12 crop of tobacco -- the next crop of tobacco to be
13 purchased.

14 Q. Those grades, BC2F, where there
15 is a B prefix, refers to Brazilian source of tobacco;
16 is that right?

17 A. Yes.

18 Q. And where there is a W -- a WB I
19 guess it is in front, indicates that it is Malawian
20 source of tobacco?

21 A. I believe that's correct.

22 Q. And the C in front of AB2B
23 indicates it's a Central American source tobacco?

24 A. That's correct.

25 Q. And the next -- I'm sorry, the

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1 last letter in the grade indicates F for flue-cured
2 and B for burley?

3 A. Yes.

4 Q. So that in terms of -- and the
5 YAB and the YB are oriental type tobacco --

6 A. Yes.

7 Q. -- which is also bought out of
8 the United States?

9 A. Yes.

10 Q. So basically these are off-shore
11 tobaccos that are referenced in this memo?

12 A. Yes.

13 Q. I show you what's been marked as
14 Bacon Exhibit 66, for identification, a memo from Mr.
15 Wilson to yourself and Mr. Dunn, dated March 7, 1985,
16 regarding foreign grown tobacco requirement.

17 A. Okay.

18 Q. Did you receive a copy of this
19 memorandum from Mr. Wilson?

20 A. The memo indicates I did. I
21 don't recall the memo.

22 Q. Do you recall the work sheet
23 that is a part of the memo -- part of the exhibit?

24 A. No, I do not.

25 Q. Do you have any understanding or

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24 20532

1 now the work sheet was calculated? The methodology?

2 MR. KLOTZ: When you asked that
3 question, I take it you are asking him does he
4 understand what the work sheet shows not if he has an
5 understanding of how whoever prepared the work sheet
6 arrived at those numbers. Do you understand the
7 distinction?

8 MR. TOPMAN: No.

9 MR. KLOTZ: It's one thing to be
10 able to say I can see what these columns say and I can
11 see what the numbers are and I understand what that is
12 intended to represent, but I don't know how whoever
13 wrote it got those numbers and what process he used to
14 arrive at them. It's another thing to say yes, I know
15 how those numbers were arrived at.

16 MR. TOPMAN: I'm still not sure
17 I understand it, but as we go through it, if you have
18 a problem, you can just say so.

19 MR. KLOTZ: If you don't know
20 where the numbers came from, just make certain that's
21 reflected in your answer. If you can read the chart
22 for Mr. Topman, that's fine. But I don't want you to
23 be saying these are accurate numbers if you don't
24 know.

25 MR. TOPMAN: No, I'm not going

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1 to ask him that kind of thing.

2 MR. KLOTZ: Okay.

3 MR. TOPMAN: And if I do.

4 obviously it's going to have to be out of his own
5 personal knowledge rather than the fact it's written
6 down on the piece of paper.

7 MR. KLOTZ: Exactly. That's
8 what I wanted to be clear about.

9 MR. TOPMAN: I have no problem
10 with that.

11 A. I don't understand the work
12 sheet.

13 Q. I show you what's previously
14 been marked as Bacon Exhibit 65, a memo from Mr. Dunn
15 to Mr. White with a cc to yourself and others.

16 A. Okay.

17 Q. Do you recall receiving this
18 memo?

19 A. Yes.

20 Q. That's Mr. Dunn's signature at
21 the bottom? It says Jack?

22 A. I'm not certain.

23 Q. Mr. Dunn is an employee of Brown
24 & Williamson or was at the time of this memo?

25 A. Yes.

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821 20534

1 pages of the exhibit?

2 A. No.

3 Q. Can you identify the handwriting
4 on the first page?

5 A. No.

6 Q. In Bacon 65 there is a reference
7 to discussions on March 6th, 1985, and a follow-up
8 meeting on March 11 respecting the -- I'm inferring
9 that when he says today, is the same day as the
10 memorandum --

11 A. Yes.

12 Q. -- respecting the purchase of
13 foreign grown tobacco. Do you recall being at such a
14 discussion -- or having ever been at such a meeting.
15 I'm sorry?

16 A. I recall being at meetings to
17 discuss this, but I can't recall if I was at either of
18 these two meetings.

19 Q. Do you recall that the crop year
20 that was being discussed was the '84 crop?

21 A. No.

22 Q. You don't recall one way or the
23 other?

24 A. No.

25 MR. TOPMAN: Let me mark as

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1 Heger Exhibit 24, for identification, a document from
2 Mr. White to Mr. Collins, dated April 22, 1985. Stamp
3 number 232778.

4 (Whereupon, Exhibit 24 was marked for
5 identification.)

6 A. Okay.

7 Q. Have you seen this document
8 before?

9 A. No, not that I can recall.

10 Q. Are you familiar, though, with
11 the subject matter of the document?

12 A. Specifically or generally?

13 Q. Let's take specifically.

14 A. No.

15 Q. Generally.

16 A. I know what it says.

17 Q. In roughly around April of 1985
18 did Brown & Williamson transfer the 1985 crop BC3F
19 grade to BC2F grade?

20 A. I have no idea.

21 Q. Can you tell me generally your
22 understanding?

23 MR. KLOTZ: Object to the form.
24 His understanding of something he's just told you he
25 has no idea?

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824 20536

1 MR. TOPHAN: Mr. Heger said he
2 had a general understanding of the subject matter.
3 That's what I'm asking him.

4 Q. I have a general understanding
5 as to what this memo says. I understand what the memo
6 says.

7 Q. I see.

8 A. I have no knowledge of the
9 specifics of this.

10 Q. Fine. In Bacon 67 --

11 A. Yes.

12 Q. -- there is a sentence in the
13 first full paragraph which reads: "It should be noted
14 that a corporate savings from substituting off-shore
15 tobaccos would only be realized if we increased the
16 level of off-shore purchases."

17 A. Yes.

18 Q. Can you explain your
19 understanding of what that means?

20 A. Yes. The understanding is if
21 the company has so much off-shore tobacco, and it was
22 used in one type of cigarettes rather than another
23 type of cigarettes, there is no corporate saving. It's
24 just the difference between blend cost, cigarette to
25 cigarette.

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824 20537

1 Therefore, to realize a total
2 corporate saving, the company must buy more off-shore
3 tobacco in total.

4 Q. Did the company have anything
5 like a rule about how much off-shore tobacco they
6 would use in their cigarettes?

7 A. The company had a guideline.

8 Q. What was that guideline?

9 A. The guideline was 30 percent.

10 Q. In the first quarter of 1985,
11 was the company at that guideline?

12 A. No.

13 Q. Was it above or below it?

14 A. Below.

15 Q. It was not using up to 30
16 percent?

17 A. That's correct.

18 Q. By going to the low cost blend
19 in nonmenthol generics, did that put the company over
20 the 30 percent guideline?

21 A. No.

22 Q. Let me show you what's
23 previously been marked as Bacon 37?

24 A. Yes.

25 Q. Have you ever seen this document

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824 20538

1 before?

2 A. I don't recall seeing this
3 document.

4 Q. Do you recognize any of the
5 numbers on the page?

6 MR. KLOTZ: Object to the form.

7 S A. No, I do not.

8 Q. Where it says at the bottom
9 right -- do you recognize the handwriting, by the way?

10 A. This top part is Mr. Bacon's.
11 It appears that -- I'm not sure the handwriting in the
12 lower part of the schedule is the same as the top
13 part. The first two columns of the top part are
14 clearly Mr. Bacon's. But other than that, it appears
15 that it's a different handwriting.

16 Q. Where it says copy given CMK and
17 DNS?

18 A. Yes.

19 Q. CMK refers to Mr. Klein?

20 A. Yes.

21 Q. DNS is who?

22 A. I have no idea.

23 MR. TOPHAN: Let's mark as Heger
24 Exhibit 25, three pages, the first of which is
25 entitled 1985 PROC Cost. Redried. Stamp numbers

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E24 20539

1 S7469 through 71.

2 (Whereupon, Exhibit 25 was marked for
3 identification.)

4 Q. Can you identify the author or
5 this -- any one of the three pages in the exhibit?

6 A. The first page is Conrad Klein.
7 The second and third pages, I cannot identify.

8 Q. Do you have an understanding of
9 what the first page shows?

10 MR. KLOTZ: Object to the form.

11 A. The top part of the schedule
12 simply compares redried processing costs for flue-
13 cured and burley at some current time of the year
14 versus the budgeted rates.

15 Q. There is a stamp at the lower
16 right-hand portion of the first page which reads
17 August 9, 1985, is that Mr. Klein's stamp?

18 A. That is Mr. Klein's initials.

19 Q. Does he customarily stamp his
20 documents like that?

21 A. I have no idea.

22 Q. Do you know whether the budgeted
23 figure is the budgeted figure that Brown & Williamson
24 uses or the budgeted figure that ELT uses?

25 MR. KLOTZ: Object to the form.

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B24 20540*

- 1 MR. TOPMAN: Okay, withdraw it.
- 2 Q. In 1965 did ELT have a budgeted
- 3 figure for processing costs for flue-cured and burley?
- 4 A. Yes.
- 5 Q. And did Brown & Williamson have
- 6 such a budgeted figure, as well?
- 7 A. Yes.
- 8 Q. Were they the same?
- 9 A. ELT is Brown & Williamson.
- 10 Q. So the numbers were the same?
- 11 A. Yes.
- 12 Q. Is that for a fiscal year basis,
- 13 those budgeted figures, or a calendar year basis?
- 14 A. Which figures do you refer to?
- 15 Q. The budgeted figures.
- 16 A. I don't understand the question.
- 17 Q. ELT, for example, I think you
- 18 testified, has a budgeted figure for processing cost.
- 19 A. Yes.
- 20 Q. Is that calculated on a calendar
- 21 year basis or on a fiscal year basis?
- 22 A. It's calculated on both bases.
- 23 Q. Does ELT use both the calendar
- 24 and fiscal year budget figures in determining what to
- 25 charge nonassociated B.A.T. companies for processing?

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PC 20541

1 MR. KLOTZ: Object to the form.

2 Q. I'll ask it a different way.

3 Which budget figure for processing cost, if any, does
4 EPT use when charging for processing to companies
5 which are not affiliated with B.A.T.?

6 A. I'm not sure.

7 Q. Are the budgeted figures
8 calculated on a fiscal year basis and on a calendar
9 year basis different?

10 A. They can be.

11 Q. Do you recall whether the
12 calendar year figures for 1984 matched any budgeted
13 figures for processing cost calculated on a fiscal
14 year basis?

15 MR. KLOTZ: Can I hear that
16 back?

17 (The court reporter read the
18 record.)

19 MR. KLOTZ: Object to the form.

20 A. I don't recall.

21 Q. The same question for calendar
22 year 1985.

23 A. Same answer.

24 Q. Looking at Heger Exhibit 26, can
25 you identify the figures that appear in the budget

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1 column for recircled processing costs as the figures
2 that in fact were the budgeted numbers?

3 A. No, I cannot.

4 Q. Do you have any understanding or
5 information as to the basis for the assumption that
6 was used in the calculation on this page?

7 S. MR. KLOTZ: Object to the form.

8 A. No.

9 S. MR. TOPMAN: Let's mark as Heger
10 Exhibit 26, three pages, stamp numbers 7311 through
11 7313.

12 (Whereupon, Exhibit 26 was marked for
13 identification.)

14 Q. I'm just going to ask you about
15 the third page.

16 A. Yes.

17 Q. Have you ever seen this page
18 before?

19 A. Not that I can recall.

20 Q. Do you know who the initials HDD
21 refer to?

22 A. No.

23 Q. Do you recognize any of the
24 figures on the page?

25 S. MR. KLOTZ: Object to the form.

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824 20543

A. No.

MR. TOPMAN: Let's mark as Heger 27, a document from Mr. McDaniel to Mr. Klein, LIFO Update and 1985 Budget Requirements, dated August 6, 1985. Stamp numbers 199025 through 29.

(Whereupon, Exhibit 27 was marked for identification.)

Q. Have you ever seen that exhibit before, Heger 27?

A. No.

MR. TOPMAN: Let's mark as Heger 28, a one-page document, entitled ELT. Stamp number 253 893.

(Whereupon, Exhibit 28 was marked for identification.)

A. Okay.

Q. Have you ever seen this before?

A. I don't recall seeing this before.

Q. Do you know who LJH is? In the upper right-hand corner?

A. I sure can't think who that is.

Q. Do you see at the bottom of the page it shows cc?

A. Yes.

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B24 20544

1 Q. CJH?
2 A. Yes.
3 Q. Agree among CJH, DNS, CMK and
4 CJH.
5 A. Or is that LJH? The last one.
6 Q. Yes, I misspoke. It is LJH. I
7 think you are right. CMK is Mr. Klein?
8 A. Correct.
9 Q. DNS we did on another document,
10 I think. You don't recall whose initials --
11 A. We never could figure that one
12 out.
13 Q. But CJH is you?
14 A. Yes.
15 Q. Is there any handwriting on this
16 document that's yours?
17 A. No.
18 Q. Under the footnote A and B,
19 there is a parenthetical which says 6.4 billion
20 sticks.
21 A. I'm sorry?
22 Q. Right here.
23 A. Yes.
24 Q. Do you recognize that
25 handwriting?

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1 A. No.

2 Q. Do you recognize any other
3 handwriting on the document?

4 A. It looks like all the other
5 handwriting is by one person. I would assume that's
6 LJR.

7 Q. In the upper right portion of
8 the document, it says P-18. Does that indicate that's
9 part of some work papers?

10 MR. KLOTZ: Object to the form.

11 Q. It's a matter of accounting
12 practice. Does that kind of designation suggest that?

13 A. It could possibly suggest that.

14 Q. There is also a P-17 further
15 down across from the number 7,720,000?

16 A. Yes.

17 Q. Neither of those two numbers,
18 either the P-18 or P-17 have any significance to you?

19 A. They mean nothing to me.

20 Q. Do you recall having any
21 conversations in the spring or summer of 1984
22 respecting the subject matter of this document?

23 MR. KLOTZ: Object to the form.

24 A. I don't recall the date.

25 Q. You did have some discussions.

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824 26546

1 though?

2 A. Yes.

3 Q. With whom?

4 A. Certainly Mr. Bacon, Mr. Ingram.

5 Q. Do you know what led to your
6 having these discussions?

7 A. Yes.

8 Q. What was it?

9 A. Trying to determine the benefit
10 of extra volume being produced at Wilson due to
11 manufacturing generic cigarettes.

12 MR. TOPMAN: Would you read back
13 the answer, please?

14 (The court reporter read the
15 record.)

16 Q. When you say volume produced at
17 Wilson, are you referring to volumes of tobacco that
18 were processed at Wilson?

19 A. Yes.

20 Q. Yesterday -- I'm going to try to
21 paraphrase it the best I can recall -- I think your
22 testimony was that the more volume there is at Wilson,
23 over which to spread Wilson's overhead costs, would
24 result in a lowering of leaf cost per pound where that
25 leaf was used.

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824 20547

1 A. Yes.

2 Q. Does that mean that the lower
3 cost for leaf per pound resulting in the spreading of
4 the overheads, would not be reflected in cigarette
5 costs until after that leaf had been aged and then
6 made into cigarettes?

7 A. No.

8 Q. Why not?

9 A. Because it's current cost under
10 the LIFO method of accounting.

11 Q. The actual tobacco that was
12 processed in fact, however, would not get into the
13 cigarette making process until it was aged?

14 A. That's correct.

15 Q. When you said it was on a LIFO
16 system and therefore it goes into as current costs,
17 does that mean that ELT adjusts the processing costs
18 on some regular basis during the year?

19 MR. KLOTZ: Object to the form.

20 A. I don't understand the question.

21 Q. As ELT's processing costs change
22 during the year, is there an adjustment made, either
23 during the year or at year end, in the costs for
24 manufacturing cigarettes?

25 MR. KLOTZ: Object to the form.

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1 A. I'm still not sure I understand
2 the question. Processing costs are processing costs.
3 Actual is actual.

4 Q. If your question is do we change
5 our standards as the processing costs will change, the
6 answer is yes.

7 Q. So that's how it gets into the
8 cigarette cost?

9 A. Yes.

10 Q. MR. KLOTZ: Is this a good time
11 for a break?

12 Q. MR. TOPMAN: Whatever is your
13 pleasure.

14 A. Good idea.

15 (A short recess was taken.)

16
17 MR. TOPMAN: Let's mark as Heger
18 Exhibit 29, stamp number pages 252782 through 92.
19 First page is a memorandum from Mr. Ingram to Evelyn
20 Mason, dated May 29, 1986.

21 A. Yes.

22 (Whereupon, Exhibit 29 was marked for
23 identification.)

24 Q. Can you identify any part of
25 this exhibit?

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1 A. I have never seen it.

2 Q. Are you at all familiar with the
3 account glossary that's attached to the current
4 memorandum, in terms of the account numbers, the
5 names?

6 A. No. I'm not.

7 Q. I show you what's previously
8 been marked as Parrack 5.

9 A. Okay.

10 Q. Can you identify what's been
11 marked as Parrack 5?

12 A. I recall in this exhibit seeing
13 two schedules that are included. I don't recall the
14 rest of the document.

15 Q. Which schedules are those?

16 A. The 08697 and 08698.

17 MR. TOPMAN: Would you read back
18 the numbers Mr. Heger gave?

19 MR. KLOTZ: 086987.

20 Q. The two schedules are entitled,
21 one, Share Of Market By Company, and the other is Unit
22 Volume By Company, correct?

23 A. That's correct.

24 Q. Did your department prepare
25 either one of those schedules?

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B24 20550

1 A. Not that I recall.
2 Q. Do you know who prepared those
3 schedules?
4 A. No, I do not.
5 Q. How did they come to your
6 attention?
7 A. I recall seeing those schedules.
8 How they came to my attention, I don't recall.
9 Q. Do you recall discussing either
10 one of the schedules with anybody at Brown &
11 Williamson?
12 A. I do not recall.
13 Q. The unit volume by company
14 schedule shows a line item for Brown & Williamson?
15 A. Yes.
16 Q. And then it shows next to it no
17 generics?
18 A. Yes.
19 Q. What does that mean?
20 A. That means that if there was no
21 generic business, what the trend was thought to be by
22 the preparer of these statements over the course of
23 time for Brown & Williamson.
24 Q. And the line that says below
25 that, generics, means what? Next to Brown &

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1 Williamson's name.

2 A. That means with generics being
3 in the marketplace and Liggett & Myers having the
4 generic business, with no other competitor, as I
5 remember it, this would indicate what would happen to
6 Brown & Williamson's volume in the estimate of the
7 preparer over a period of time.

8 Q. Do you know who the preparer
9 was?

10 A. No, I do not.

11 Q. Do you know whether the unit
12 volume figures next^o to Brown & Williamson's name under
13 the -- with generics line item, is the same as it is
14 in the Brown & Williamson five-year plan for the
15 period 1984 through 1988? ♀

16 A. May I see the plan?

17 Q. Surely. ♀

18 MR. KLOTZ: And you are asking
19 him are the numbers just for '84 through 88?

20 MR. TOPMAN: That's all the plan
21 covers. ♀

22 MR. KLOTZ: So you want to show
23 him the plan and have him tell you whether the plan
24 says 62.6 billion for 1984? ♀

25 MR. TOPMAN: And for the other ♀

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824 20552

1 years.

2 MR. KLOTZ: And for the other
3 years if you are in doubt about that.

4 A. Let me make sure this is the
5 same. Here we go. The same numbers. With generics
6 or without generics?

7 MR. KLOTZ: You want it with
8 generics, right?

9 MR. TOPMAN: Right.

10 MR. KLOTZ: He wants to know
11 whether the plan shows 62.8 billion for 1984.

12 A. No. The plan numbers are
13 different.

14 Q. And the numbers that appear in
15 Parrack 5 entitled Brown & Williamson Generic
16 Proposal, are significantly lower than the five-year
17 plan for 1984 through 1988?

18 MR. KLOTZ: Object to the form.
19 You want him to answer
20 separately as to each one of the years, whether in his
21 judgment if they are significant or not?

22 MR. TOPMAN: That would be fine
23 if that's the way you'd like to do it.

24 A. Yes, for each year.

25 Q. 1984 through 1988?

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224 20553

1 A. Yes.

2 Q. Just asking you for the five-
3 year plan for the period 1984 through 1988, Heger
4 Exhibit 12. which you have just been looking
5 at --

6 A. Yes.

7 Q. -- do you recall when it was
8 prepared?

9 A. It would have been prepared in
10 the fall of 1983.

11 Q. In the upper right-hand corner
12 of Parrack 5 there is a handwritten notation. Appears
13 to say final and then another indecipherable word, 3/9.
14 Do you recognize the handwriting, who wrote that?

15 A. No.

16 Q. Do you have any understanding of
17 what it means?

18 A. The final and then the symbols
19 that we are having trouble reading?

20 Q. Yes, sir.

21 A. No, I do not.

22 Q. Looking back for a moment to the
23 two schedules that you have seen on this document,
24 under generic volume there is an item that says
25 scenario 2.

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824 20554

1 A. Yes.

2 Q. Have you ever seen a scenario 1

3 or 3.

4 MR. KLOTZ: Object to the form.

5 A. I don't recall.

6 Q. I show you what's previously

7 been marked as Bacon Exhibit 44.

8 A. Okay.

9 Q. Did you receive a copy of Bacon

10 44, a memo from Mr. Bacon to Mr. McDonough, and I

11 believe shows a cc to you?

12 A. o Yes, I do remember seeing this.

13 Q. Do you know whether, in the

14 subject matter where it says financial implications,

15 B&W generic proposal, that is a reference to what

16 you've previously seen as Parrack 5?

17 MR. KLOTZ: Object to the form.

18 A. What is your question?

19 Q. In Mr. Bacon's memo of March 8,

20 1984, Bacon Exhibit 44, the subject matter of it says

21 financial implications of a B&W generic proposal.

22 A. Yes.

23 Q. Is the reference to a B&W

24 generic proposal in Mr. Bacon's memo, a reference to

25 what has been previously marked as Parrack 5, entitled

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B24 20555

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1 Brown & Williamson Generic Proposal?

2 MR. KLOTZ: He wants to know
3 does this word refer to this specific document.

4 A. Yes. I understand the question.
5 and my answer is I'm not sure.

6 Q. Let me show you Bacon Exhibit
7 45, a memorandum from Mr. Bacon to Mr. McDonough with
8 a copy to you, dated March 12, 1984.

9 A. Yes.

10 Q. Also with a subject matter of
11 financial implications - B&W generic proposal.

12 A. Uh-huh.

13 Q. Does the --

14 A. May I read this?

15 Q. SurePy.

16 A. Okay.

17 Q. I direct your attention to the
18 subject matter of the memorandum for Mr. Bacon, which
19 says Financial Implications - B&W Generic Proposal --

20 A. Dated --

21 Q. -- dated March 12, 1984, Bacon
22 Exhibit 45. Is the reference in that memo to a B&W
23 generic proposal, a reference to the document marked
24 Parrack 5, which is entitled Brown & Williamson
25 Generic Proposal?

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1

MR. KLOTZ: Object to the form.

2

A. I'm not certain.

3

Q. Do you believe it is, though?

4

MR. KLOTZ: Object to the form.

5

Q. Or you just don't know?

6

A. I don't know.

7

Q. You did receive, though, Bacon

8

Exhibit 45?

9

A. Yes.

10

Q. Did you discuss either Bacon

11

Exhibit 44 or Bacon Exhibit 45 with Mr. McDonough?

12

A. I don't recall, but I'm sure I

13

did.

14

Q. Do you recall any conversations

15

you may have had with anybody at Brown & Williamson

16

respecting Bacon 44 or Bacon 45?

17

A. I can't recall any specific

18

conversations.

19

MR. TOPMAN: Let's mark as Heger

20

Exhibit 30. for identification, a memorandum dated

21

March 19, 1984, from Mr. Heger to Mr. McDonough, with

22

a cc to Mr. Klein. Stamp number 133707.

23

(Whereupon, Exhibit 30 was marked for

24

identification.)

25

A. Okay.

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Q. Did you write this memorandum?

A. Yes.

Q. These are your initials at the bottom of the page?

A. Yes.

Q. Did someone ask you for this information that's contained in this memorandum?

A. I don't recall the specific purpose for this memorandum.

Q. In the second paragraph of the memorandum it says: "As you are aware, the above decrements add to B&W's trading profit and taxable income because B.A.T. is not on LIFO. From a UK point of view, the tax is approximately 50 percent of the above is negative."

Could you explain what that means?

A. As it says, B.A.T.'s accounts are not on LIFO, so B.A.T. accounts are amended from LIFO to FIFO in their reporting; therefore, the effect of B&W having a decrement, and higher trading profit and taxable income means that B&W has to pay additional tax. That tax expense is a negative to B.A.T.'s accounts.

Q. I show you what's been

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1 previously marked as Klein 10.

2 A. Yes.

3 Q. Have you seen before Klein

4 Exhibit 10?

5 A. I have seen the first page of
6 Klein Exhibit 10.

7 Q. Is that in your handwriting?

8 A. Yes.

9 Q. Have you seen any of the other
10 pages?

11 A. I don't recall seeing any of the
12 other pages.

13 Q. Does the first page of Klein 10
14 relate in any way to the memo of March 19, 1984, which
15 is Heger Exhibit 30?

16 MR. KLOTZ: Object to the form.

17 A. I would assume there is some
18 relation.

19 Q. Why would you do that?

20 A. Because they are both the same
21 date.

22 Q. And they also -- Klein 10 refers
23 to six billion in 1985 and holds it constant, correct?

24 A. Yes.

25 Q. And that's what your memo of

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B24 20558

1 March 19 assumes, also.

2 A. Yes.

3 Q. That assumption is in both
4 documents?

5 A. Apparently it is.

6 Q. You just don't have a
7 recollection^s of having prepared this document for the
8 purpose of getting information so you could then
9 prepare a memorandum?

10 MR. KLOTZ: Before you answer
11 that question, I've lost now when you are referring to
12 document, whether you are referring to the first page
13 that Mr. Heger has identified or whether you are
14 incorporating everything else that he said he didn't
15 know about.

16 MR. TOPMAN: No. I'm obviously
17 referring to the first page.

18 MR. KLOTZ: So, could I have
19 the --

20 MR. TOPMAN: I'll be glad to
21 rephrase it.

22 MR. KLOTZ: Okay.

23 Q. The first page of Klein 10, was
24 that prepared so that you would have sufficient
25 information to prepare your memorandum of March 19,

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824 20559

1 1984?

2 MR. KLOTZ: Object to the form.

3 A. I would assume they are related
4 for that purpose.

5 Q. Do you remember what you did
6 with the first page of Klein Exhibit 10 after you
7 wrote it?

8 A. I assume I gave it to Mr. Klein.

9 Q. Do you remember whether Mr.
10 Klein came back to you with any response to having
11 received the first page of Klein 10?

12 A. I don't specifically recall, but
13 I assume he did.

14 Q. Do you recall the basis for your
15 having written in your March 19, 1984 memorandum the
16 third paragraph -- I'm sorry, the last paragraph?

17 A. The last paragraph of my March
18 the 19th memo?

19 Q. Yes.

20 A. This indicates that under the
21 assumption of generic volume at six billion units a
22 year, Brown & Williamson would not have any LIFO
23 decrements during the five-year plan.

24 Q. What was the basis for your
25 having written that?

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824 20560

1 A. The basis was a calculation
2 apparently produced by Mr. Klein.

3 Q. And is that the calculation that
4 is attached to the first page of Exhibit 10?

5 MR. KLOTZ: Object to the form.

6 A. I have no idea.

7 Q. Do you have any recollection of
8 the calculation that Mr. Klein did?

9 A. No.

10 Q. I show you what's been
11 previously marked as Falk Exhibit 8, I believe it's
12 Falk Exhibit 8, for identification. I'll give you the
13 stamp numbers, 087131 through 41.

14 A. Okay.

15 Q. Can you identify Falk Exhibit 8?

16 A. I recall receiving a copy of
17 this and reading it.

18 Q. Did you have any discussion with
19 anybody about it?

20 A. I had discussions about this
21 document, but I can't specifically say with who.

22 Q. Do you recall the substance of
23 it?

24 A. My department furnished the
25 financial exhibits that were incorporated in this

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B24 20561

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1 memo.

2 Q. Would you identify for us which
3 pages you are referring to?

4 A. 087136, 087137, 087138, 187139,
5 087140 and 087141.

6 Q. If you would look at 36055536?

7 A. What number?

8 Q. I'm sorry. 0955 -- oh, I'm
9 sorry. Let me turn you to it, if I may. 87136. Up
10 in the left hand corner it's titled Generic Volumes 5
11 Percent Share?

12 A. Yes.

13 Q. It's 1.3 x factor, March 22,
14 1984.

15 A. Yes.

16 Q. This chart relates to what is
17 called here established brands?

18 A. Yes.

19 Q. Those are full priced branded
20 cigarettes that Brown & Williamson produces?

21 A. Yes.

22 Q. And it shows an incremental
23 overhead rate of 50 cents per thousand cigarettes?

24 A. Yes.

25 Q. And if you would turn to the

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824 20562

1 next to the last page of the document?

2 A. Next to the last page, yes.

3 Q. Which is stamp number 87140.

4 This page relates to generic cigarettes, does it not,
5 or Brown & Williamson?

6 A. This page relates to an
7 assumption that B&W would enter the generic business,
8 and these volumes as shown would be Brown & Williamson
9 sales.

10 Q. For generics?

11 A. For generics.

12 Q. And under the incremental
13 overhead rate for those generics, it shows 50 cents
14 per thousand, cost; right?

15 A. Yes.

16 Q. If you would look at Page 5 of
17 the text, am I correct that the document is dated
18 March 22, 1984, correct?

19 A. Yes.

20 Q. You got it somewhere around that
21 time period. I take it?

22 A. I would assume so.

23 Q. In the first paragraph of the
24 text it says in the last sentence: "The five-year
25 plan projects LIFO decrements of 11.2 million dollars

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821 20563

1 in 1964 and 7.8 million dollars in 1965. Finances
2 advise that the sale of four billion units in 1965
3 would eliminate the decrements entirely."

4 Do you recall having any
5 conversations with Brown & Williamson employees
6 respecting those statements?

7 Q. A. No, I do not.

8 Q. Do you know who in finance is
9 referred to in that last sentence that finance has
10 advised?

11 A. I would only be guessing.

12 Q. It was not you?

13 A. Not that I can recall.

14 Q. Do you know who prepared Falk
15 Exhibit 8?

16 A. As I said earlier, the finance
17 department prepared the last six pages of the exhibit.
18 Yes, I can say who prepared it. It was Mr. Blott.

19 Q. And you don't recall having any
20 discussions with Mr. Blott respecting the statement in
21 the last sentence of the first paragraph of --

22 A. I don't recall.

23 Q. Let me show you what's
24 previously been marked as Klein Exhibit 9, for
25 identification. Have you ever seen that document

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824 20564

1 Secrecy?

2 A. I don't recall having seen it.

3 Q. I show you what's been marked as
4 Alar Exhibit 30, for identification. And particularly
5 the first paragraph of the memo. Is the reference --

6 A. Pardon me.

7 Q. I'm sorry, I thought you
8 finished.

9 A. Okay.

10 Q. Do you know whether the
11 reference to the attached memo is a reference to your
12 March 19, 1984 memo⁹, Alar Exhibit 30?

13 A. May I see the memo?

14 Q. Surely.

15 A. Yes, it is.

16 Q. And you got a copy of Alar 30?

17 A. Yes.

18 Q. Off the record.

19 (A discussion was held off the
20 record.)

21 A. Okay.

22 Q. Do you recall having any
23 discussions with anyone respecting Alar 30?

24 A. I'm sure I had discussions, but
25 I don't recall.

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824 20565⁶

1 Q. I show you what's marked as
2 Wilson 3, for identification. It's a document in the
3 upper right-hand corner shows 5-15-84.

4 A. Yes. Okay.

5 Q. You reviewed Wilson Exhibit 3?

6 A. Yes.

7 Q. Have you seen it before?

8 A. Yes.

9 Q. Around the time of the May 15,
10 1984 date in the upper right-hand corner?

11 A. Yes.

12 Q. From whom did you receive a
13 copy?

14 A. Repeat the question, please?

15 Q. From whom did you receive a
16 copy?

17 A. I don't recall.

18 Q. Do you know who wrote this
19 document?

20 A. No, I do not.

21 Q. Did you participate in drafting
22 any portion of it?

23 A. The finance department, my
24 department, prepared the financial exhibits.

25 Q. Could you identify those by

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1 number, please?

2 A. 079518, 079519, 079520, 079521,
3 079522, 079523, and 079524.

4 MR. TOPMAN: Would you be good
5 enough to read me back the pages? I'm sorry, I got
6 them right here.

7 Q. On Page 13 of the document there
8 is a section entitled Financial Implication of
9 Recommendations.

10 A. Yes.

11 Q. Did you see any prior draft of
12 that portion of this document?

13 MR. KLOTZ: How far are you
14 including in that portion, just up through the top of
15 the next page?

16 MR. TOPMAN: No. I'm sorry, you
17 are right. Up through and including the section
18 including LIFO leaf decrements.

19 MR. KLOTZ: Okay. So those two --
20 that one and a half page section.

21 MR. TOPMAN: Correct.

22 MR. KLOTZ: Okay.

23 A. I don't specifically recall, but
24 I'm sure I did.

25 Q. Were you the officer in finance

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1 responsible for the financial implications of Brown &
2 Williamson's decision going to the generic business?

3 MR. KLOTZ: Object to the form.

4 A. No.

5 Q. Who was?

6 A. John McDonough.

7 Q. Do you recall having any
8 conversations with Mr. McDonough about the financial
9 implications of Brown & Williamson's deciding to go
10 into the generic business?

11 A. Yes.

12 Q. When did you have those
13 discussions?

14 A. I don't recall.

15 Q. Was anybody else present?

16 A. I don't recall.

17 Q. Do you recall how many
18 discussions you had?

19 A. Several.

20 Q. Do you remember the substance of
21 them?

22 A. The substance of the
23 conversations would have been the full financial
24 implications.

25 Q. Can you tell me what those

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1 conversations were, what you said to him and what Mr.
2 McDonough said to you, as best you can recall?

3 A. I can't recall.

4 Q. You can recall the substance
5 generally?

6 A. The substance would have been
7 all elements of the financial bearing on the generic
8 proposal.

9 Q. Do you remember any specifics
10 beyond that?

11 A. No.

12 Q. Excuse me for one second, Mr.
13 Heger.

14 MR. TOPMAN: Let's mark as Heger
15 Exhibit 31, for identification. Stamp number pages
16 NO4623 through 32.

17 (Whereupon, Exhibit 31 was marked for
18 identification.)

19 A. Yes.

20 Q. Have you seen this document
21 before?

22 A. I don't recall seeing it.

23 Q. You haven't seen any of the
24 pages or it?

25 A. I recd certain I haven't seen.

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1 any of the attachments. I don't recall seeing this
2 first page.

3 Q. In the Wilson Exhibit 3, the
4 proposal marked final?

5 MR. KLOTZ: That's this one.

6 A. Yes.

7 Q. On page 14 there is a sub-
8 heading called LIFO leaf decrements.

9 A. Yes.

10 Q. Do you know the basis for the
11 statements contained in that section?

12 MR. KLOTZ: Object to the form.

13 MR. TOPMAN: What's your
14 objection?

15 MR. KLOTZ: I think the question
16 is confusing in context. I don't know what you mean
17 for the basis, whether you mean who he got the numbers
18 from, whether you mean how were the numbers
19 calculated, whether you mean did they come from some
20 other documents. I'm happy to have him answer the
21 question.

22 MR. TOPMAN: Sure.

23 Q. I'll ask you another question.
24 Do you know who supplied the numbers that went into
25 the LIFO leaf decrement section?

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1 A. They would have come from the
2 finance department.

3 Q. Do you know from whom?

4 A. They would be from Conrad Klein
5 and Tony Bacon.

6 Q. So you did not participate in
7 the preparation of this exhibit?

8 A. No.

9 Q. In the right-hand margin next to
10 some of the LIFQ leaf decrement figure, there is some
11 handwriting.

12 A. Yes.

13 Q. Is that your handwriting?

14 A. Yes.

15 Q. What do those numbers represent?

16 A. Those numbers represent an
17 addition of two numbers.

18 Q. Do you recall why you did that?

19 A. No.

20 Q. On the first page there is some
21 handwriting at the bottom of the page.

22 A. Yes.

23 Q. Is that your handwriting?

24 A. Yes.

25 Q. What does that mean?

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1 A. That means there are four words:
2 branded, blended, filter cigarette and filter. Those
3 are the brands of generics that Brown & Williamson was
4 planning at sometime to manufacture and enter the
5 generic market with.

6 Q. And to the right of that --

7 A. Sorry.

8 Q. -- are the --

9 A. To the right of that, those are
10 styles that would go with the brands on the left:
11 ultra nonmenthol, kings nonmenthol, kings menthol,
12 longs nonmenthol, longs menthol, lights nonmenthol,
13 and lights menthol. Then the figure to the right of
14 the pages is 28, which is a multiplication of the four
15 brands times the styles.

16 Q. For each brand?

17 A. In total.

18 Q. Right. So that basically this
19 shows that there were 28 generic type products of
20 cigarettes.

21 A. 28 different styles of generic
22 type products. Let me reword that. Seven different
23 styles of generic products, with four brands.

24 Q. For a total of 28, though?

25 A. Yes.

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1 Q. On Page 6 there is some hand-
2 writing in the upper right-hand corner.

3 A. Yes.

4 Q. That's your handwriting?

5 A. Yes.

6 Q. Can you explain what those
7 numbers represent?

8 A. My copy is not legible as far as
9 the handwriting.

10 Q. Does the handwriting perhaps say
11 already in plan?

12 A. I'm not sure. Do you have
13 another copy I can see?

14 Q. (Indicating.)

15 A. Already in plan.

16 Q. Can you explain what that refers
17 to?

18 A. May I see the plan?

19 Q. The five-year plan for '84
20 through --

21 A. Yes. May I have your calculator?

22 Q. Sure.

23 A. I'm afraid I don't know what
24 those numbers refer to.

25 Q. Do you understand conceptually

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1 what they refer as opposed to now you actually
2 calculate them?

3 A. No.

4 Q. Was your department at all
5 involved in assisting in the preparation of the five-
6 year sales volumes that are in the five-year plan from
7 1984 to 1988?

8 A. Yes.

9 Q. Do you know whether in
10 calculating those figures B&W took into account some
11 cannibalization from generics?

12 A. Yes.

13 Q. Do you know whether or not when
14 Brown & Williamson calculated its projected volume
15 loss to the economy segment as it appears on Page 6 of
16 Wilson 3, they took into account that the five-year
17 plan which had already reflected some cannibalization?

18 A. Would you repeat that question?

19 MR. TOPMAN: Can you read it
20 back?

21 (The court reporter read the
22 record.)

23 MR. KLOTZ: Object to the form.

24 A. The answer is no, I do not know.

25 Q. Would you turn to the chart

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1 which is entitled Trading Profit Effect Of B&W
2 Entering Generic Market Black & White/Private Labels
3 in Wilson Exhibit 3. for identification, the May 15,
4 1964 document.

5 MR. KLOTZ 79521?

6 MR. TOPMAN: Yes.

7 Q. Do you have that, Mr. Heger?

8 A. Yes.

9 Q. The trading allowances figure is
10 a dollar 65 per thousand from 1984 through 1988,
11 correct?

12 A. Yes.

13 Q. Do you know the composition of
14 any of the elements of that trading allowance figure?

15 A. No, I do not.

16 Q. Do you know whether it was
17 anticipated it would include a volume rebate?

18 A. Your question is -- would you
19 repeat the question, please?

20 (The court reporter read the
21 record.)

22 A. No, I'm not aware of it.

23 Q. Do you know who in the finance
24 department prepared this trading profit effect
25 statement?

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1 A. There are no initials on this
2 document, so I do not know.

3 Q. Do you have any recollection of
4 having any conversations about this document with
5 anybody at Brown & Williamson?

6 A. I'm sure I did. I have no
7 specific recollection, though.

8 Q. The incremental overhead rate
9 per thousand cigarettes from 1984 --

10 A. Yes.

11 Q. -- is reflected as 50 cents per
12 thousand, correct?

13 A. Yes.

14 Q. And it also goes up in 1988 to
15 63 cents per thousand, correct?

16 A. In 1988? Yes.

17 Q. Is that an inflation factor that
18 you built in using 50 cents as the base?

19 A. Yes.

20 Q. In the footnote it says: "1985
21 and forward assumes the same net price relationship of
22 generic to full-priced products that exist at present
23 (65 percent of full-priced)."

24 A. Yes.

25 Q. That means that this trading

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1 profit statement was based on the assumption that if
2 full-priced branded cigarettes went up a certain
3 amount, the price of Brown & Williamson's generic at
4 list price would go up an amount sufficient so that
5 the new list price for generics would be equivalent to
6 65 percent of the new list price for the full-price
7 branded cigarettes?

8 A. That's correct.

9 Q. Were you present at any
10 presentation or discussion of what is marked as Wilson
11 3, for identification? This generic proposal.

12 A. I don't recall being present.

13 Q. Was there a presentation made to
14 Brown & Williamson senior management with respect to
15 this proposal as is reflected in Wilson 3?

16 A. I don't recall.

17 Q. Turn to the trading profit
18 effect statement that we've been talking about.

19 A. Yes.

20 Q. Stamp No. 79521. There is some
21 handwriting at the top portion of the page.

22 A. Yes.

23 Q. That's your handwriting?

24 A. Yes.

25 Q. Would you read it, please?

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1 A. Do you have a more legible copy.
2 please?

3 Q. (Indicating.)

4 A. It says: "June -- which is
5 marked down to 1985 for some reason -- "60 percent of
6 segment which is growing to" -- I can't -- I believe
7 your copy is more legible than this one.

8 Q. You are welcome -- off the
9 record.

10 (A discussion was held off the
11 record.)

12 Q. Will that help? Probably not.
13 You can look at mine, but I filled it in. I put
14 pencil over it.

15 A. Well, if you filled it in --

16 Q. All right.

17 A. So I can't --

18 Q. Where are we here now? You read
19 it up to --

20 A. To to something.

21 Q. Then just pick up from there.

22 A. "Of 10 percent by 1988." May I
23 see that back again, please? Then over to the right
24 it says "60 - B&W 20 - private label."

25 Q. Do you recall what you meant by

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1 that?

2 A. No, I do not.

3 Q. Was it your understanding that
4 the volume figure projected in this trading profit
5 effect for 1985 of 15.2 billion sticks included the
6 assumption that by June of 1985, B&W would be having a
7 sales volume at a rate of 60 percent of the generic
8 business?

9 A. As far as that assumption, at
10 this time I think we may be able to find that in the
11 document.

12 O THE WITNESS: I thought I read
13 it some place.

14 Q. Would you look at page 13 on the
15 financial implications?

16 A. This says 60 percent partici-
17 pation by 1988 in the Black & White segment. So why
18 that is marked with a line in June and then marked
19 with a line at 1985, I'm afraid I don't know.

20

21 (The lunch recess was taken.)

22 * * * * *

23

24

25

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